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INCLUDING
THE CONGRESSIONAL BUDGET ACT,
GRAMM-RUDMAN-HOLLINGS,
THE BUDGET ENFORCEMENT ACT OF 1990,
AND RELATED
BUDGET-PROCESS LEGISLATION

JIM SASSER, *Chairman*
COMMITTEE ON THE BUDGET
UNITED STATES SENATE

Annotations by William G. Dauster
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INTRODUCTION

The law governing the budget process resembles nothing so much as sediment. It has accumulated in several statutes, each layered upon the prior one: the Congressional Budget Act of 1974,[1] Gramm-Rudman-Hollings in 1985 and again in 1987,[2] the Byrd Rule in 1985,[3] and most recently, the Budget Enforcement Act of 1990.[4] In addition, precedents have put a gloss on the law as applied in the Senate. This incremental growth has created something of a legal nettle.

This volume collects the major legislation affecting the Congressional budget process, explains references found there, points out some of the major precedents in the Senate interpreting the law, and incorporates some legislative history material. It magnifies the details with the hope that seeing more will also allow the reader to understand the process better.

The text includes first the Congressional Budget Act, then Gramm-Rudman-Hollings, then the Budget Enforcement Act, and finally chapter 11 of title 31 of the United States Code (which sets forth the requirements for the President's budget) each as amended over the years. Footnotes set forth sections that subsequent laws have repealed.

With regard to Congressional interpretation of these statutes, this work focuses on the Senate's precedents. The author defers to his colleagues on the House side of the Capitol for interpretation of the Act in that Body. Several sources exist for research on precedents in the House.[5]

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[1] The Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (July 12, 1974) (codified as amended at 2 U.S.C. § § 601-688).

[2] The Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, tit. II, 99 Stat. 1037, 1038 (Dec. 12, 1985), *amended by* the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, tit. I-II, 101 Stat. 754 (Sept. 29, 1987), *and further amended* (codified as amended at 2 U.S.C. § § 901-922).

[3] Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 20001, 100 Stat. 82, 390-91 (Apr. 7, 1986), *amended by* the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 7006, 100 Stat. 1874, 1949-1950 (Oct. 21, 1986), *and amended by* the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 205, 101 Stat. 754, 784-85 (Sept. 29, 1987), *and amended by* the Budget Enforcement Act of 1990, Pub. L. No. 101-508, § 13214, 104 Stat. ____, ____ (Nov. 5, 1990); H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 603, 653-55 (1990); 136 CONG. REC. H12,589, H12,603 (Oct. 26, 1990).

[4] The Budget Enforcement Act of 1990, Pub. L. No. 101-508, tit. XIII, 104 Stat. ____, ____ (Nov. 5, 1990); H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 603-63 (1990); 136 CONG. REC. H12,589-605 (Oct. 26, 1990).

This volume builds on an earlier one, called the *Congressional Budget Act Annotated*.[6] As its contents have expanded to address more than just the Congressional Budget Act, so has its title changed. This volume, however, completely supersedes the earlier one.

The author expects that the reader will not so much read this volume as consult it. Consequently, footnotes often repeat information that relates to several different sections. The author hopes that what the volume thus loses to bulk it makes up in ease of access to information.

GUIDE TO SIGNALS

The citations in this volume follow the rules of *A Uniform System of Citation*:[7]

No signal	before a citation means that the cited authority states the proposition, identifies the source of the quotation, or identifies an authority identified in the text.
E.g.,	before a citation means that the cited authority, among other authorities, states the proposition.
See	before a citation means that the cited authority directly supports the proposition.

---

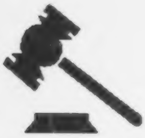
[5] *E.g.*, W. Brown, Constitution, Jefferson's Manual and Rules of the House of Representatives, 100th Cong., 2d Sess. (1988) (H. Doc. No. 100-248); Deschler-Brown, Procedure in the U.S. House of Representatives ch. 13 (1987); 3 L. Deschler, Deschler's Precedents of the United States House of Representatives ch. 13, § 21 (1977).

[6] W. Dauster, Congressional Budget Act Annotated, S. Prt. No. 101-86, 101st Cong., 2d Sess. (1990).

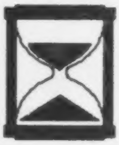
[7] Harvard Law Review Ass'n, A Uniform System of Citation 8-9, 21 (14th ed. 1986).

See also	before a citation means that the cited authority constitutes additional source material that supports the proposition. Authorities that state or directly support the proposition will precede this signal.
Cf.	before a citation means that the cited authority supports a proposition different from the cited proposition, but sufficiently analogous to lend support.
See generally	before a citation means that the cited authority presents background material related to the proposition.
See supra p. ____	means that the authority referred to or direct support appears above at the page cited.
See infra p. ____	means that the authority referred to or direct support appears below at the page cited.
Id.	means see the immediately preceding authority cited.

In addition to these signals, this volume also includes symbols to highlight two subjects to which participants in the process frequently refer: points of order and controlled time.



means that the text sets forth a point of order in the Senate. (As the number of possible points of order is nearly infinite, this volume does not mark all possible points of order.)



means that the text sets forth a procedure for controlled time in the Senate.

ACKNOWLEDGEMENTS AND DISCLAIMERS

The author of this volume has collected many of the precedents that appear here from the Rules database of the LEGIS computerized legislative information system available to Senate offices. Often the author has merely paraphrased the headnote of the Parliamentarian's notation of a precedent in that database. Consequently, this book owes much -- if not all -- to the Senate Parliamentarian, Alan Frumin (who wrote the lion's share of the entries in the Rules database), and his excellent and helpful staff, Assistant Parliamentarian Kevin Kayes, Second Assistant Parliamentarian Jim Weber, Third Assistant Parliamentarian Jennifer Smith, and Executive Assistant Sally Goffinet. The author owes particular thanks to former Assistant Parliamentarian and former Counsel to the Senate Budget Committee Gail Del Balzo, now of the Congressional Budget Office. Thanks are due, too, to former Parliamentarian Bob Dove, now of the Republican Leader's Office.

The Budget Committee, under the leadership of Chairman Jim Sasser of Tennessee, its Staff Director Larry Stein, and its Deputy Staff Director John Callahan (who, among his many other responsibilities, oversees preparation of the Committee's prints) has provided the impetus, direction, and guidance necessary to the production of this volume. The Senate Budget Committee's Legal Group, Counsel Agnes Bundy and Staff Assistant Jackie King, as well as Assistant to the Deputy Director Louise Echols, former Senate Budget Committee Legal Aide Rita Graf, and Buck White and Alex Green of the Senate Budget Committee Publications Department provided invaluable technical support in the production of this volume. The author owes thanks, as well, to former Senate Budget Committee Staff Directors Rick Brandon, Steve Bell, and John Hilley, former Chief Counsel Nell Payne (now of the White House Office of Legislative Affairs), former Republican Assistant Staff Director Carol Hartwell, and Austin Smythe of the Republican staff of the Senate Budget Committee, for their input.

Bob Keith and Sandy Davis of the Congressional Research Service and Tom Armstrong of the General Accounting Office also provided valuable component parts of this volume.

Although the author has imposed on each of these people named above for material for this volume and for help in its writing, none bears responsibility for its content. The annotations included here do not necessarily reflect the views of the Senate Budget Committee or of anyone other than the author, although, as do most authors, the author does hope that others will share the views expressed here.

The author owes a debt of thanks to those with whom he worked in drafting the Budget Enforcement Act of 1990, a partial list of whom

includes Richard Kogan of the House Budget Committee, Jim Horney, formerly of the House Budget Committee and now of the General Accounting Office, David Pomerantz of the House Rules Committee, Bob Weinhagen of the House Legislative Counsel's Office, Bill Jensen of the Senate Legislative Counsel's Office, and Alan Cohen and Sue Nelson of the Senate Budget Committee.

The author would be remiss not to thank Ellen Weintraub for her patience in putting up with endless discussions of this volume. Finally, the author owes a debt to Martin Gardner, whose work[8] has undoubtedly inspired many an annotation, and perhaps a few laws.

W.G.D.

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[8] M. GARDNER, THE ANNOTATED ALICE: ALICE'S ADVENTURES IN WONDERLAND & THROUGH THE LOOKING GLASS (1960).

CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974

An Act[9]

To establish a new congressional budget process; to establish Committees on the Budget in each House; to establish a Congressional Budget Office; to establish a procedure providing congressional control over the impoundment of funds by the executive branch; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLES; TABLE OF CONTENTS

SECTION 1. (a) SHORT TITLES. -- This Act may be cited as the "Congressional Budget and Impoundment Control Act of 1974". Titles I through IX[10] may be cited as the "Congressional Budget Act of 1974", and title X[11] may be cited as the "Impoundment Control Act of 1974".[12]

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[9] The Congressional Budget and Impoundment Control Act of 1974, Pub. L. No. 93-344, 88 Stat. 297 (July 12, 1974) (codified as amended at 2 U.S.C. § § 601-688).

[10] *See infra* pp. 21-306.

[11] *See infra* pp. 307-333.

[12] Although a President's statement upon signing a piece of legislation has no validity as legislative history, as the President issues it after Congress has exercised the legislative powers that article I, section 1 of the Constitution vests exclusively with Congress, the following is President Nixon's statement upon signing the Congressional Budget Act:

> **Statement About the Congressional Budget and Impoundment Control Act of 1974.** ***July*** **12, 1974**
>
> I TAKE special pleasure today in signing H.R. 7130, the Congressional Budget and Impoundment Control Act of 1974. I commend the Congress for this landmark legislation, and I pledge the full support of the executive branch in helping fulfill the great promise of this bill.
>
> In each of my five budget messages, I have urged the Congress to review and reform its procedures for considering the Federal budget and

(continued...)

---

[12] (...continued)
pledge the support and cooperation of this Administration in achieving this vital national goal. During the past year, the Congressional committees concerned worked energetically and effectively with this in mind. H.R. 7130 is the result.

Under this legislation, the Congress will, for the first time, focus on overall budget totals early in the legislative process and then relate individual appropriation items to each other within a general set of spending priorities.

Budget committees in the House and Senate, assisted by a new Congressional Budget Office, will be established to develop overall spending levels and priorities.

A tight timetable is established for Congressional action on authorizing legislation and appropriation bills, and a reconciliation process is provided to bring appropriation bills into line with prescribed overall budget totals.

In short, this bill will allow the Congress to step up to and equal responsibility for controlling Federal expenditures.

Prior to the enactment of this bill, the Congress has had to consider a large number of separate measures with no system for establishing priorities relating to an overall spending goal. This system did not impose sufficient disciplines on the Congress to stop the passage of pork-barrel legislation or to resist the pressure of special interest groups seeking a disproportionate share of the tax collar. Costly programs could be enacted without adequate consideration of their added burden to the taxpayer. This lack of discipline in Congressional procedures has been one of the major factors behind the sizable increases in Federal spending over the past decade.

The Congress has wisely recognized these weaknesses and taken steps to correct them through the passage of this legislation.

There are provisions in this bill I hope will be simplified if the requirements imposed by them prove to be restrictive. The impoundment control provisions, in particular, may well limit the ability of the Federal Government to respond promptly and effectively to rapid changes in economic conditions.

Nevertheless, this bill represents a major step toward reform of the Congressional budgetary system. Its enactment is especially timely, because an excessive rate of inflation makes the need for careful consideration and control over Government spending more crucial than ever. Already the Congress has enacted, or has pending, programs which could add some $4 billion to our 1975 budget proposals of $305 billion. I will have no choice but to veto bills which substantially exceed my budget.

The 1976 budget also gives us the opportunity to work together to face our fiscal responsibilities. In the near future, I will send to each department and agency their preliminary budget guidance for 1976. It will reflect a bal-

(continued...)

(b) TABLE OF CONTENTS. --

Sec. 1. Short titles; table of contents.
Sec. 2. Declaration of purposes.
Sec. 3. Definitions.

TITLE I -- ESTABLISHMENT OF HOUSE AND SENATE BUDGET COMMITTEES

Sec. 101. Budget Committee of the House of Representatives.
Sec. 102. Budget Committee of the Senate.

TITLE II -- CONGRESSIONAL BUDGET OFFICE

Sec. 201. Establishment of Office.
Sec. 202. Duties and functions.
Sec. 203. Public access to budget data.

TITLE III -- CONGRESSIONAL BUDGET PROCESS[13]

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[12](...continued)

> anced budget in 1976. To achieve this balance, I plan to propose a broad range of legislation which will be needed to cut back individual programs.
>
> I am confident that the Congress will assist me in this effort to keep spending from exceeding my proposed budget levels. H.R. 7130 will permit the high level of cooperation which will be required to achieve this critical goal.

Statement About the Congressional Budget and Impoundment Control Act of 1974, 1974 PUB. PAPERS 587-88 (July 12, 1974). On the same day, the White House released a fact sheet and the transcript of a news briefing on the act by Roy L. Ash, Director of the Office of Management and Budget. *See id.* at 588.

[13] Section 231 of Gramm-Rudman-Hollings revised the table of contents for title III to read as it currently does. *See infra* p. 361. As originally enacted in 1974, the table of contents for title III read as follows:

TITLE III -- CONGRESSIONAL BUDGET PROCESS

Sec. 300. Timetable.
Sec. 301. Adoption of first concurrent resolution.
Sec. 302. Matters to be included in joint statement of managers; reports by committees.
Sec. 303. First concurrent resolution on the budget must be adopted before legislation providing new budget authority, new spending authority, or changes in revenues or the public debt limit is considered.
Sec. 304. Permissible revisions of concurrent resolutions on the budget.
Sec. 305. Provisions relating to consideration of concurrent resolutions on the budget.
Sec. 306. Legislation dealing with congressional budget must be handled by budget committees.
Sec. 307. House committee action on all appropriations bills to be completed before first

(continued...)

Sec. 300. Timetable.
Sec. 301. Annual adoption of concurrent resolution on the budget.
Sec. 302. Committee allocations.
Sec. 303. Concurrent resolution on the budget must be adopted before legislation providing new budget authority, new spending authority, new credit authority or changes in revenues or the public debt limit is considered.
Sec. 304. Permissible revisions of concurrent resolutions on the budget.
Sec. 305. Procedures relating to consideration of concurrent resolutions on the budget.
Sec. 306. Legislation dealing with congressional budget must be handled by budget committees.
Sec. 307. House committee action on all appropriations bills to be completed by June 10.
Sec. 308. Reports, summaries, and projections of congressional budget actions.
Sec. 309. House approval of regular appropriation bills.
Sec. 310. Reconciliation.
Sec. 311. New Budget authority, new spending authority, and revenue legislation must be within appropriate levels.
Sec. 312. Effect of points of order.[14]
Sec. 313. Extraneous matter in reconciliation legislation.[15]

TITLE IV -- ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

Sec. 401. Bills providing new spending authority.
Sec. 402. Legislation providing new credit authority.[16]
Sec. 403. Analyses by Congressional Budget Office.
Sec. 404. Jurisdiction of Appropriations Committees.
Sec. 405. Study by the General Accounting Office of forms of Federal financial

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[13](...continued)

appropriation bill is reported.
Sec. 308. Reports, summaries, and projections of congressional budget actions.
Sec. 309. Completion of action on bills providing new budget authority and certain new spending authority.
Sec. 310. Second required concurrent resolution and reconciliation process.
Sec. 311. New Budget authority, new spending authority, and revenue legislation must be within appropriate levels.

[14] Section 13207(b)(2) of the Budget Enforcement Act added this reference. *See infra* p. 641.

[15] Section 13214(b)(5) of the Budget Enforcement Act added this reference. *See infra* p. 657.

[16] Section 232(a)(1) of Gramm-Rudman-Hollings revised the table of contents item for section 402 to read as it currently does. *See infra* p. 362. As originally enacted in 1974, the table of contents item for section 402 read: "Reporting of Authorizing Legislation."

commitment that are not reviewed annually by Congress.[17]
Sec. 406. Off-budget agencies, programs, and activities.
Sec. 407. Member user group.

TITLE V – CREDIT REFORM[18]

Sec. 500. Short title.
Sec. 501. Purposes.
Sec. 502. Definitions.
Sec. 503. OMB and CBO analysis, coordination, and review.
Sec. 504. Budgetary treatment.
Sec. 505. Authorizations.
Sec. 506. Treatment of deposit insurance and agencies and other insurance programs.
Sec. 507. Effect on other laws.

TITLE VI – BUDGET AGREEMENT ENFORCEMENT PROVISIONS[19]

Sec. 601. Definitions and point of order.
Sec. 602. Committee allocations and enforcement.
Sec. 603. Consideration of legislation before adoption of budget resolution for that

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[17] Section 232(a)(2) of Gramm-Rudman-Hollings added the table of contents items for sections 405-407. *See infra* p. 362. As originally enacted in 1974, the Act had no sections 405-407.

[18] Section 13112(a)(1) of the Budget Enforcement Act repealed the table of contents listings for title V as they existed before that Act and added the table of contents listings for title V that now exist. *See infra* 624. Before enactment of the Budget Enforcement Act, the table of contents listing for title V read as follows:

TITLE V – CHANGE OF FISCAL YEAR

Sec. 501. Fiscal year to begin October 1.
Sec. 502. Transition to new fiscal year.
Sec. 503. Accounting procedures.
Sec. 504. Conversion of authorizations of appropriations.
Sec. 505. Repeals.
Sec. 506. Technical amendment.

[19] Section 232(a)(3) of Gramm-Rudman-Hollings struck the table of contents item for section 606. *See infra* p. 362. Section 13112(a)(1) of the Budget Enforcement Act repealed the table of contents listings for title VI as they existed before that Act and added the table of contents listings for that title that now exist. *See infra* 624. Before enactment of the Budget Enforcement Act, the table of contents listing for title VI read as follows:

TITLE VI – AMENDMENTS TO BUDGET AND ACCOUNTING ACT, 1921

Sec. 601. Matters to be included in President's budget.
Sec. 602. Midyear review.
Sec. 603. Five-year budget projections.
Sec. 604. Allowances for supplemental budget authority and uncontrollable outlays.
Sec. 605. Budget data based on continuation of existing level of services.
Sec. 606. [Repealed.]
Sec. 607. Year-ahead requests for authorization of new budget authority.

fiscal year.
Sec. 604. Reconciliation directives regarding pay-as-you-go requirements.
Sec. 605. Application of section 311; point of order.
Sec. 606. 5-Year budget resolutions; budget resolutions must conform to balanced budget and emergency deficit control act of 1985.
Sec. 607. Effective date.

TITLE VII -- PROGRAM REVIEW AND EVALUATION

Sec. 701. Review and evaluation by standing committees.
Sec. 702. Review and evaluation by the Comptroller General.
Sec. 703. Continuing study of additional budget reform proposals.

TITLE VIII -- FISCAL AND BUDGETARY INFORMATION AND CONTROLS

Sec. 801. Amendment to Legislative Reorganization Act of 1970.
Sec. 802. Changes in functional categories.

TITLE IX -- MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

Sec. 901. Amendments to rules of the House.
Sec. 902. Conforming amendments to standing rules of the Senate.
Sec. 903. Amendments to Legislative Reorganization Act of 1946.
Sec. 904. Exercise of rulemaking powers.
Sec. 905. Effective dates.
Sec. 906. Application of congressional budget process to fiscal year 1976.

TITLE X -- IMPOUNDMENT CONTROL

PART A -- GENERAL PROVISIONS

Sec. 1001. Disclaimer.
Sec. 1002. Amendment to Antideficiency Act.
Sec. 1003. Repeal of existing impoundment reporting provision.

PART B -- CONGRESSIONAL CONSIDERATION OF PROPOSED RESCISSIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY

Sec. 1011. Definitions.
Sec. 1012. Rescission of budget authority.
Sec. 1013. Proposed deferrals of budget authority.[20]

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[20] Section 8003(b) of the Omnibus Budget Reconciliation Act of 1987 revised the table of contents item for section 1013 to read as it currently does. Pub. L. No. 100-203, § 8003(b), 101 Stat. 1330, 1330-282 (Dec. 22, 1987). This change conformed the table of contents to the substantive change made by section 206 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, which codified case law regarding deferral authority. *See* Pub. L. No. 100-119, § 206, 101 Stat. 754, 785-86 (Sept. 29, 1987).
(continued...)

Sec. 1014. Transmission of messages; publication.
Sec. 1015. Reports by Comptroller General.
Sec. 1016. Suits by Comptroller General.
Sec. 1017. Procedure in House and Senate.

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[20](...continued)
As originally enacted in 1974, the table of contents item for section 1013 read: "Disapproval of proposed deferrals of budget authority."

DECLARATION OF PURPOSES

SEC. 2.[21] The Congress declares that it is essential --

(1) to assure effective congressional control over the budgetary process;

(2) to provide for congressional determination each year of the appropriate level of Federal revenues and expenditures;

(3) to provide a system of impoundment control;

(4) to establish national budget priorities; and

(5) to provide for the furnishing of information by the executive branch in a manner that will assist the Congress in discharging its duties.

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[21] Section 2 is codified at 2 U.S.C. § 621 (1988).

DEFINITIONS

SEC. 3.[22] IN GENERAL. -- **For purposes of this Act --**

(1) The terms "budget outlays" and "outlays" mean, with respect to any fiscal year, expenditures and net lending of funds under budget authority[23] during such year.[24]

(2)[25] BUDGET AUTHORITY AND NEW BUDGET AUTHORITY. --

(A) IN GENERAL. -- The term "budget authority" means the authority provided by Federal law to incur financial obligations, as follows:

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[22] Section 3 is codified as amended at 2 U.S.C. § 622.

What is now section 3 was originally section 3(a). An Act to Abolish the Joint Committee on Atomic Energy repealed section 3(b). Pub. L. No. 95-110, 91 Stat. 884 (Sept. 20, 1977). For the text of section 3(b) as originally enacted in 1974, see *infra* note 41.

[23] Section 3(2) defines "budget authority." *See infra* pp. 11-13.

[24] Note that section 406(a), regarding off-budget agencies, programs, and activities (*see infra* pp. 221-222), also require that certain items shall be included in budget outlays.

[25] Section 13211(a) of the Budget Enforcement Act amended subsection (2) to read as it does now for fiscal years beginning with fiscal year 1992. *See infra* p. 647. Before enactment of the Budget Enforcement Act, and for fiscal years through fiscal year 1991, subsection (2) read as follows:

> (2) The term "budget authority" means authority provided by law to enter into obligations which will result in immediate or future outlays involving Government funds or to collect offsetting receipts, except that such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.

Section 13211(b) of the Budget Enforcement Act sets forth the 1992 effective date. *See infra* 648.

(i) provisions of law that make funds available for obligation and expenditure (other than borrowing authority), including the authority to obligate and expend the proceeds of offsetting receipts and collections;

(ii) borrowing authority, which means authority granted to a Federal entity to borrow and obligate and expend the borrowed funds, including through the issuance of promissory notes or other monetary credits;

(iii) contract authority, which means the making of funds available for obligation but not for expenditure; and

(iv) offsetting receipts and collections as negative budget authority, and the reduction thereof as positive budget authority.

(B) LIMITATIONS ON BUDGET AUTHORITY. -- With respect to the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account, any amount that is precluded from obligation in a fiscal year by a provision of law (such as a limitation or a benefit formula) shall not be budget authority in that year.

(C) NEW BUDGET AUTHORITY. -- The term "new budget authority" means, with respect to a fiscal year --

(i) budget authority that first becomes available for obligation in that year, including budget authority that becomes available in that year as a result of a reappropriation; or

(ii) a change in any account in the availability of unobligated balances of budget authority carried over from a prior year, resulting from a provision of law first effective in that year;

and includes a change in the estimated level of new budget authority provided in indefinite amounts by existing law. The term includes the cost for direct loan and loan guarantee programs, as those terms are defined by title V[26]

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[26] *See infra* pp. 225-250.

There is no final period in the original. Section 13201(b)(1) of the Budget Enforcement Act added this last sentence. *See infra* p. 629.

Note that section 406(a), regarding off-budget agencies, programs, and activities (*see infra* pp. 221-222), and section 504(d)(1), regarding the budgetary accounting for credit (*see infra* p. 242), also require that certain items shall be included in budget authority.

Note that the statement of managers accompanying the conference report on the Budget Enforcement Act set forth scorekeeping guidelines that affect what constitutes budget authority. *See infra* note 1162. Prior to the resolution of those scorekeeping guidelines, the following colloquy setting forth the Budget Committee's policy for scoring of budget authority resulting from lease-purchases appeared in the *Congressional Record* during the debate on the budget resolution for fiscal year 1991:

> SCORING OF LEASE-PURCHASES
>
> Mr. DECONCINI. Mr. President, I see my friend the chairman of the Budget Committee on the floor and I wonder if he might be able to answer several questions I have concerning the budgetary treatment of leases and lease-purchases.
>
> Mr. SASSER. I will certainly try to answer any questions that the distinguished Senator from Arizona might have.
>
> Mr. DECONCINI. I thank the Senator. My staff informs me that the Senate Budget Committee, the House Budget Committee, the Congressional Budget Office and the Office of Management and Budget have been involved in discussions concerning the scorekeeping treatment of leases and lease-purchases.
>
> Mr. SASSER. The Senator is correct. After our experience with the fiscal year 1990 appropriations bills, the Budget Committee informed the other committees that it would be reviewing the budgetary treatment of leases and lease purchases in future fiscal years. That review has led to the following

(continued...)

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[26](...continued)
current Senate Budget Committee position.

First, in the case of leases, budget authority will be scored in the year in which it is first made available in the amount of the Government's total estimated obligations. The outlays will be scored equal to the estimated annual lease payments. Since neither the President's budget nor the budget resolution reported out by the Budget Committee provided the budget authority necessary to implement this new treatment of leases, it is my intention that this scorekeeping practice will not go into effect until fiscal year 1992. Furthermore, this scorekeeping practice affects only new leases or renewals entered into after the change. It does not affect existing leases. Finally, on the subject of leases, if the fiscal year 1992 President's budget request, for some reason, does not reflect this scorekeeping change, the Budget Committee will review its position on the scoring of leases.

The scoring of lease-purchase agreements, which will begin in fiscal year 1991, is as follows:

Standard-lease purchases will be scored like leases. Budget authority will be scored in the year in which it is first made available in the amount of the Government's total estimated obligations -- both the principal and the interest. Outlays will be scored for any year in the amount of payments estimated to be made in that year to liquidate the obligations. In the case of a standard lease purchase, outlays will be scored equal to the estimated annual payment.

Scoring both the principle and all of the interest in the first year means that there will be a large amount of budget authority associated with lease-purchases, which re[f]lects the fact that lease-purchases are more expensive than direct Federal construction. For example, at a interest rate of 10 percent, the budget authority needed for a 30-year lease-purchase will be four times larger than that needed for direct Federal construction.

Recently a second type of lease-purchase has been developed. In this type of lease-purchase, the third-party financing is guaranteed by the full faith and credit of the Government. Such arrangements will be treated like purchases and not like leases, and would be scored accordingly. Budget authority will be scored in the year in which the budget authority is first made available in the amount of the Government's total estimated obligations-both the principal and the interest. Principal outlays will be scored over the construction period at the rate of construction.

In cases where the legislation is vague as to the type of lease purchase contract, the Budget Committee will use its best judgment. Initially, the presumption will be that it is a standard lease-purchase-no Government guarantee-and the outlays will be scored over the lease period. However, if actual practice indicates that the presumption is erroneous-either with regard to particular cases or generally-the presumption may change.

I am hesitant at this point to offer a definitive definition of a standard

(continued...)

(3) The term "tax expenditures" means those revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of tax liability; and the term "tax expenditures budget" means an enumeration of such tax expenditures.

(4) The term "concurrent resolution on the budget" means --

(A) a concurrent resolution setting forth the congressional budget for the United States Government for a fiscal year as provided in section 301;[27] and

(B)[28] any other concurrent resolution revising the congressional budget for the United States Government for a fiscal year as described in section

---

[26](...continued)

> lease purchase, because of the complexity of the issue. However, the following is an illustrative set of the characteristics of a standard lease purchase. First, there should be no explicit Government guarantee of the third-party financing. Second, it is preferable that the Government not own the land on which the facility is to be constructed. Third, the project should be a general purpose asset. It is not necessary for the contract to meet all of these criteria to qualify as a standard lease purchase for scoring purposes. However, the first criterion is necessary.

136 CONG. REC. S8,019-20 (June 14, 1990) (statements of Sen. DeConcini and Chairman Sasser).

[27] *See infra* pp. 46-69.

[28] Section 232(b) of Gramm-Rudman-Hollings repealed what was then subparagraph (B) and redesignated what was then subparagraph (C) as subparagraph (B). *See infra* p. 362. As originally enacted in 1974, subparagraph (B) referred to the second concurrent resolution on the budget and read as follows:

> (B) a concurrent resolution reaffirming or revising the congressional budget for the United States Government for a fiscal year as provided in section 310; . . . .

304.[29]

(5) The term "appropriation Act" means an Act referred to in section 105 of title 1, United States Code.[30]

(6) The term "deficit" means, with respect to a fiscal year, the amount by which outlays[31] exceeds receipts during that year.[32]

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[29] *See infra* p. 93.

[30] Section 105 of title 1 of the United States Code provides:

> The style and title of all Acts making appropriations for the support of Government shall be as follows: "An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year)."

1 U.S.C. § 105 (1988).

Section 506 of the Congressional Budget Act as it was originally enacted amended section 105 of title 1 by striking out "June 30" and inserting "September 30." *See infra* note 796.

[31] Section 3(1) defines "budget outlays." *See supra* p. 11.

[32] Section 13112(a)(2)(A) of the Budget Enforcement Act amended section 3(6) to read as it does now. *See infra* 624. Before the enactment of the Budget Enforcement Act, section 3(6) read as follows:

> (6) The term "deficit" means, with respect to any fiscal year, the amount by which total budget outlays for such fiscal year exceed total revenues for such fiscal year. In calculating the deficit for purposes of comparison with the maximum deficit amount under the Balanced Budget and Emergency Deficit Control Act of 1985 and in calculating the excess deficit for purposes of sections 251 and 252 of such Act (notwithstanding section 710(a) of the Social Security Act), for any fiscal year, the receipts of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund for such fiscal year and the taxes payable under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954 during such fiscal year shall be included in total revenues for such fiscal year, and the disbursements of each such Trust Fund for such fiscal year shall be included in total budget outlays for such fiscal year. Notwithstanding any other provision of law except to the extent provided by section 710(a) of the Social Security Act, the receipts, revenues, disbursements, budget authority, and outlays of each off-budget Federal entity for a fiscal year shall be included in total budget authority, total budget outlays, and total revenues and the amounts of budget authority and outlays set forth set forth for each major functional category, for such fiscal year. Amounts paid by the Federal

(continued...)

(7)[33] The term "surplus" means, with respect to a fiscal year, the amount by which receipts exceeds outlays[34] during that year.

(8)[35] The term "government-sponsored enterprise"[36] means a corporate entity created by a law of the United States that --

(A)(i) has a Federal charter authorized by law;

(ii) is privately owned, as evidenced by capital

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[32](...continued)
Financing Bank for the purchase of loans made or guaranteed by a department, agency, or instrumentality of the Government of the United States shall be treated as outlays of such department, agency, or instrumentality.

[33] Section 13112(a)(2)(A) of the Budget Enforcement Act amended section 3(7) to read as it does now. *See infra* p. 624. Before the enactment of the Budget Enforcement Act, the Congressional Budget Act did not define the term "surplus," and section 3(7) defined maximum deficit amounts. For the text of the old section 3(7), see *infra* note 807.

[34] Section 3(1) defines "budget outlays." *See supra* p. 11.

[35] Section 13112(a)(2)(A) of the Budget Enforcement Act amended section 3(8) to read as it does now. *See infra* p. 624. Before enactment of the Budget Enforcement Act, section 3(8) read as follows:

> (8) The term "off-budget Federal entity" means any entity (other than a privately-owned Government-sponsored entity) --
>
> (A) which is established by Federal law, and
>
> (B) the receipts and disbursements of which are required by law to be excluded from the totals of --
>
> (i) the budget of the United States Government submitted by the President pursuant to section 1105 of title 31, United States Code, or
>
> (ii) the budget adopted by the Congress pursuant to title III of this Act.

[36] Note that section 13501 of the Budget Enforcement Act also addresses the financial safety and soundness of Government-sponsored enterprises (*see infra* pp. 683-690) and that section 13501(a) of the Budget Enforcement Act provides a different definition of "Government-sponsored enterprise" for the purposes of that section only. *See infra* p. 683.

stock owned by private entities or individuals;

(iii) is under the direction of a board of directors, a majority of which is elected by private owners;

(iv) is a financial institution with power to --

(I) make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector; and

(II) raise funds by borrowing (which does not carry the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts; and

(B)(i) does not exercise powers that are reserved to the Government as sovereign (such as the power to tax or to regulate interstate commerce);

(ii) does not have the power to commit the Government financially (but it may be a recipient of a loan guarantee commitment made by the Government); and

(iii) has employees whose salaries and expenses are paid by the enterprise and are not Federal employees subject to title 5 of the United States Code.

(9)[37] The term "entitlement authority" means spending authority described by section 401(c)(2)(C).[38]

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[37] Section 201(a)(1) of Gramm-Rudman-Hollings added paragraphs (9) and (10). *See infra* p. 345.

[38] Section 401(c)(2)(C) describes authority:

(C) to make payments (including loans and grants), the budget authority for which is not provided for in advance by appropriations Acts, to

(continued...)

(10)[39] The term "credit authority"[40] means authority to incur direct loan obligations or to incur primary loan guarantee commitments.[41]

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[38](...continued)

> any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law;

See infra pp. 204-205. For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 609.

[39] Section 201(a)(1) of Gramm-Rudman-Hollings added paragraphs (9) and (10). *See infra* p. 345.

[40] Section 402(b) defines "*new* credit authority":

> (b) DEFINITION. -- For purposes of this Act, the term "new credit authority" means credit authority (as defined in section 3(10) of this Act) not provided by law on the effective date of this section, including any increase in or addition to credit authority provided by law on such date.

See infra p. 212. Note that title V of the Congressional Budget Act addresses the issue of credit accounting. *See infra* pp. 225-250.

[41] An Act to Abolish the Joint Committee on Atomic Energy, Pub. L. No. 95-110, 91 Stat. 884 (Sept. 20, 1977), repealed section 3(b). As originally enacted in 1974, section 3(b) read as follows:

> (b) JOINT COMMITTEE ON ATOMIC ENERGY. -- For purposes of titles II, III, and IV of this Act, the Members of the House of Representatives who are members of the Joint Committee on Atomic Energy shall be treated as a standing committee of the House, and the Members of the Senate who are members of the Joint Committee shall be treated as a standing-committee of the Senate.

TITLE I
ESTABLISHMENT OF HOUSE AND SENATE BUDGET COMMITTEES

BUDGET COMMITTEE OF THE HOUSE OF REPRESENTATIVES

SEC. 101. (a) Clause 1 of Rule X of the Rules of the House of Representatives[42] is amended by redesignating

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[42] Rule X(1)(e) now reads as follows:

> (e)(1) **Committee on the Budget,** consisting of the following Members:
>
> (A) Members who are members of other standing committees, including five Members who are members of the Committee on Appropriations, and five Members who are members of the Committee on Ways and Means;
>
> (B) one Member from the leadership of the majority party; and
>
> (C) one Member from the leadership of the minority party.
>
> No Member other than the representative from the leadership of the majority party and the representative from the leadership of the minority party shall serve as a member of the Committee on the Budget during more than three Congresses in any period of five successive Congresses (disregarding for this purpose any service performed as a member of such committee for less than a full session in any Congress), except that an incumbent chairman having served on the committee for three Congresses and having served as chairman of the committee for not more than one Congress shall be eligible for reelection to the committee as chairman for one additional Congress. Previous service on the Committee before the One Hundred First Congress shall be disregarded, for the purposes of this prohibition during the One Hundred First Congress, for the ranking minority member of the Committee (who is not the Member designated as the Member from the leadership of the minority party). A minority Member having served on the committee for three Congresses and having served as the ranking minority member in the last such Congress shall be eligible for reelection to the committee as ranking minority Member for

(continued...)

paragraphs (e) through (u) as paragraphs (f) through (v), respectively, and by inserting after paragraph (d) the following new paragraph:

"(e) Committee on the Budget, to consist of twenty-three Members as follows:

"(1) five Members who are members of the Committee on Appropriations;

"(2) five Members who are members of the Committee on Ways and Means;

"(3) eleven Members who are members of other standing committees;

"(4) one Member from the leadership of

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[42](...continued)
one additional Congress. All selections of Members to serve on the committee shall be made without regard to seniority.

(2) All concurrent resolutions on the budget (as defined in section 3(a)(4) of the Congressional Budget Act of 1974) and other matters required to be referred to the committee under titles III and IV of that Act, and any resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.

(3) The Committee shall have the duty--

(A) to report the matters required to be reported by it under titles III and IV of the Congressional Budget Act of 1974;

(B) to make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the House on a recurring basis;

(C) to request and evaluate continuing studies of tax expenditures, to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and to report the results of such studies to the House on a recurring basis; and

(D) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties.

RULES OF THE HOUSE OF REPRESENTATIVES Rule X(1)(e) (1988).

the majority party; and

"(5) one Member from the leadership of the minority party.

No Member shall serve as a member of the Committee on the Budget during more than two Congresses in any period of five successive Congresses beginning after 1974 (disregarding for this purpose any service performed as a member of such committee for less than a full session in any Congress). All selections of Members to serve on the committee shall be made without regard to seniority."

(b) Rule X of the Rules of the House of Representatives is amended by adding at the end thereof the following new clause:

"6. For carrying out the purposes set forth in clause 5 of Rule XI, the Committee on the Budget or any subcommittee thereof is authorized to sit and act at such times and places within the United States, whether the House is in session, has recessed, or has adjourned, to hold such hearings, to require the attendance of such witnesses and the production of such books or papers or documents or vouchers by subpena[43] or otherwise, and to take such testimony and records, as it deems necessary. Subpenas[44] may be issued over the signature of the chairman of the committee or of any member of the committee designated by him; and may be served by any person designated by such chairman or member. The chairman of the committee, or any member thereof, may administer oaths to witnesses."

(c) Rule XI of the Rules of the House of Representatives is

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[43] This appears so in the original; it should read "subpoena."

[44] This appears so in the original; it should read "Subpoenas."

amended by redesignating clauses 5 through 33 as clauses 6 through 34, respectively, and by inserting after clause 4 the following new clause:

> **"5. Committee on the Budget**
>
> **"(a) All concurrent resolutions on the budget (as defined in section 3(a)(4)[45] of the Congressional Budget Act of 1974) and other matters required to be referred to the Committee under titles III[46] and IV[47] of that Act.**
>
> **"(b) The Committee shall have the duty --**
>
> > **"(1) to report the matters required to be reported by it under titles III[48] and IV[49] of the Congressional Budget Act of 1974;**
> >
> > **"(2) to make continuing studies of the effect on budget outlays[50] of relevant existing and proposed legislation and to report the results of such studies to the House on a recurring basis;**
> >
> > **"(3) to request and evaluate continuing studies of tax expenditures,[51] to devise**

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[45] This is now section 3(4). *See supra* pp. 15-16.

[46] *See infra* pp. 41-158.

[47] *See infra* pp. 199-223.

[48] *See infra* pp. 41-158.

[49] *See infra* pp. 199-223.

[50] Section 3(1) defines "budget outlays." *See supra* p. 11.

[51] Section 3(3) defines "tax expenditures." *See supra* p. 15.

methods of coordinating tax expenditures, policies, and programs with direct budget outlays,[52] and to report the results of such studies to the House on a recurring basis; and

"(4) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties."

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[52] Section 3(1) defines "budget outlays." *See supra* p. 11.

BUDGET COMMITTEE OF THE SENATE

SEC. 102. (a) Paragraph 1 of Rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(r)(1) Committee on the Budget, to which committee shall be referred all concurrent resolutions on the budget (as defined in section 3(a)(4)[53] of the Congressional Budget Act of 1974) and all other matters required to be referred to that Committee under titles III[54] and IV[55] of that Act, and messages, petitions, memorials, and other matters relating thereto.

"(2) Such committee shall have the duty --

"(A) to report the matters required to be reported by it under titles III[56] and IV[57] of the Congressional Budget Act of 1974;

"(B) to make continuing studies of the effect on budget outlays[58] of relevant existing and proposed legislation and to report the results of such studies to the Senate on a recurring basis;

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[53] This is now section 3(4). *See supra* p. 15.

[54] *See infra* pp. 41-158.

[55] *See infra* pp. 199-223.

[56] *See infra* pp. 41-158.

[57] *See infra* pp. 199-223.

[58] Section 3(1) defines "budget outlays." *See supra* p. 11.

"(C) to request and evaluate continuing studies of tax expenditures,[59] to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays,[60] and to report the results of such studies to the Senate on a recurring basis; and

"(D) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties."

(b) The table contained in paragraph 2 of rule XXV of the Standing Rules of the Senate is amended by inserting after --

"Banking, Housing and Urban Affairs .... 15"

the following:

"Budget .... 15"[61]

(c) Paragraph 6 of rule XXV of the Standing Rules of the Senate is amended by adding at the end thereof the following new subparagraph:

"(h) For purposes of the first sentence of subparagraph (a), membership on the Committee on the Budget shall not be taken into account until that date occurring during the first session of the Ninety-fifth Congress, upon which the appointment of the majority and minority party members of the standing

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[59] Section 3(3) defines "tax expenditures." *See supra* p. 15.

[60] Section 3(1) defines "budget outlays." *See supra* p. 11.

[61] This item refers to the number of members of the Budget Committee. Pursuant to changes in the Standing Rules of the Senate, the Senate increased the Committee's membership from 15 to 20 members in the 96th Congress, to 22 members in the 97th Congress, and to 24 members in the 100th Congress, and decreased the Committee's membership from 24 to 23 members in the 101st Congress.

committees of the Senate is initially completed."[62]

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[62] Section 2 of S. Res. 9, 94th Cong., 1st Sess., 121 CONG. REC. S19,371 (Nov. 5, 1975), repealed subsections (d) and (e). S. Res. 9 set forth the requirements for open committee meetings for committees generally that now appear at paragraph (5)(b) of rule XXVI of the Standing Rules of the Senate. Until S. Res. 9 repealed it, subsection (d) was codified at 2 U.S.C. § 190a-3 (1988). As originally enacted in 1974, subsections (d) and (e) read as follows:

> (d) Each meeting of the Committee on the Budget of the Senate, or any subcommittee thereof, including meetings to conduct hearings, shall be open to the public, except that a portion or portions of any such meeting may be closed to the public if the committee or subcommittee, as the case may be, determines by record vote of a majority of the members of the committee or subcommittee present that the matters to be discussed or the testimony to be taken at such portion or portions --
>
> > (1) will disclose matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;
> >
> > (2) will relate solely to matters of committee staff personnel or internal staff management and procedure;
> >
> > (3) will tend to charge an individual with crime or misconduct, to disgrace or injure the professional standing of an individual, or otherwise to expose an individual to public contempt or obloquy, or will represent a clearly unwarranted invasion of the privacy of an individual;
> >
> > (4) will disclose the identity of any informer or law enforcement agent or will disclose any information relating to the investigation or prosecution of a criminal offense that is required to be kept secret in the interest of effective law enforcement; or
> >
> > (5) will disclose information relating to the trade secrets or financial or commercial information pertaining specifically to a given person if --
> >
> > > (A) an Act of Congress requires the information to be kept confidential by Government officers and employees; or
> > >
> > > (B) the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific Government financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person.
>
> (e) Paragraph 7(b) of rule XXV of the Standing Rules of the Senate and section 133A(b) of the Legislative Reorganization Act of 1946 shall not

(continued...)

TITLE II
CONGRESSIONAL BUDGET OFFICE

ESTABLISHMENT OF OFFICE

SEC. 201.[63] (a) IN GENERAL --

(1) There is established an office of the Congress to be known as the Congressional Budget Office (hereinafter in this title referred to as the "Office"). The Office shall be headed by a Director; and there shall be a Deputy Director who shall perform such duties as may be assigned to him by the Director and, during the absence or incapacity of the Director or during a vacancy in that office, shall act as Director.

(2) The Director shall be appointed by the Speaker of the House of Representatives and the President pro tempore of the Senate after considering recommendations received from the Committees on the Budget of the House and the Senate, without regard to political affiliation and solely on the basis of his fitness to perform his duties. The Deputy Director shall be appointed by the Director.

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[62](...continued)
apply to the Committee on the Budget of the Senate.

Compare the similar provisions governing the Congressional Budget Office in section 203 (*see infra* pp. 39-40), and of the Government in the Sunshine Act, Pub. L. No. 94-409, 90 Stat. 1241 (Sept. 13, 1976) (codified as amended at 5 U.S.C. § § 551, 552, 552b, 556, 557 & 39 U.S.C. § 410 (1988)).

Pursuant to subsection (d), and subsequently, Standing Rule XXVI, all meetings of the Budget Committee have been open to the public.

[63] Section 201 is codified at 2 U.S.C. § 601 (1988).

(3) The term of office of the Director first appointed shall expire at noon on January 3, 1979, and the terms of office of Directors subsequently appointed shall expire at noon on January 3 of each fourth year thereafter.[64] Any individual appointed as Director to fill a vacancy prior to the expiration of a term shall serve only for the unexpired portion of that term. An individual serving as Director at the expiration of a term may continue to serve until his successor is appointed. Any Deputy Director shall serve until the expiration of the term of office of the Director who appointed him (and until his successor is appointed), unless sooner removed by the Director.

(4) The Director may be removed by either House by resolution.

(5) The Director shall receive compensation at a per annum gross rate equal to the rate of basic pay, as in effect from time to time, for level III of the Executive Schedule in section 5314 of title 5, United States Code. The Deputy Director shall receive compensation at a per annum gross rate equal to the rate of basic pay, as so in effect, for level IV of the Executive Schedule in section 5315 of such title.

(b) PERSONNEL. -- The Director shall appoint and fix the compensation of such personnel as may be necessary to carry out the duties and functions of the Office. All personnel of the Office shall be appointed without regard to political affiliation and solely on the basis of their fitness to perform their duties. The Director may prescribe the duties and responsibilities of the personnel of the Office, and delegate to them authority to perform any of the duties, powers, and functions imposed on the Office or on the Director. For purposes of pay (other than pay of the Director and Deputy Director) and employment benefits, rights, and privileges, all personnel of the Office shall be treated as if they were employees of the House of Representatives.

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[64] Terms of Directors of the Congressional Budget Office thus expired on January 3, 1983 (for Alice M. Rivlin), on January 3, 1987 (for Rudolph G. Penner), and on January 3, 1991 (for Robert D. Reischauer), and will expire on January 3, 1995, on January 3, 1999, and so on.

(c) EXPERTS AND CONSULTANTS. -- In carrying out the duties and functions of the Office, the Director may procure the temporary (not to exceed one-year) or intermittent services of experts or consultants or organizations thereof by contract as independent contractors, or, in the case of individual experts or consultants, by employment at rates of pay not in excess of the daily equivalent of the highest rate of basic pay payable under the General Schedule of section 5332 of title 5, United States Code.

(d) RELATIONSHIP TO EXECUTIVE BRANCH. -- The Director is authorized to secure information, data, estimates, and statistics directly from the various departments, agencies, and establishments of the executive branch of Government and the regulatory agencies and commissions of the Government. All such departments, agencies, establishments, and regulatory agencies and commissions shall furnish the Director any available material which he determines to be necessary in the performance of his duties and functions (other than material the disclosure of which would be a violation of law). The Director is also authorized, upon agreement with the head of any such department, agency, establishment, or regulatory agency or commission, to utilize its services, facilities, and personnel with or without reimbursement; and the head of each such department, agency, establishment, or regulatory agency or commission is authorized to provide the Office such services, facilities, and personnel.

(e) RELATIONSHIP TO OTHER AGENCIES OF CONGRESS. -- In carrying out the duties and functions of the Office, and for the purpose of coordinating the operations of the Office with those of other congressional agencies with a view to utilizing most effectively the information, services, and capabilities of all such agencies in carrying out the various responsibilities assigned to each, the Director is authorized to obtain information, data,

estimates, and statistics developed by the General Accounting Office, the Library of Congress, and the Office of Technology Assessment, and (upon agreement with them) to utilize their services, facilities, and personnel with or without reimbursement. The Comptroller General, the Librarian of Congress, and the Technology Assessment Board are authorized to provide the Office with the information, data, estimates, and statistics, and the services, facilities, and personnel, referred to in the preceding sentence.

(g)[65] [(f)] REVENUE ESTIMATES. --[66] For the purposes of revenue legislation which is income, estate and gift, excise, and payroll taxes (i.e., Social Security), considered or enacted in any session of Congress, the Congressional Budget Office shall use exclusively during that session of Congress revenue estimates provided to it by the Joint Committee on Taxation. During that session of Congress such revenue estimates shall be transmitted by the Congressional Budget Office to any committee of the House of Representatives or the Senate requesting such estimates, and shall be used by such Committees in determining such estimates. The Budget Committees[67] of the Senate and House shall determine all estimates with respect to scoring points of order and with respect to the execution of the purposes of this Act.[68]

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[65] This is so in the original, but should read "(f)." Section 13202(b) of the Budget Enforcement Act (*see infra* p. 632) transferred to this second subsection (g) the text of what used to be section 273 of Gramm-Rudman-Hollings. The statement of managers accompanying the conference report on the Budget Enforcement Act explains the change briefly: "The conference agreement codifies section 273 of the Balanced Budget and Emergency Deficit Control Act of 1985 as part of the Congressional Budget Act without change." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,170 (1990).

[66] Section 13202(c)(2) of the Budget Enforcement Act added the words "REVENUE ESTIMATES. --." *See infra* p. 632.

[67] This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 302(g), *infra* p. 82; section 310(d)(4), *infra* p. 142; section 311(c), *infra* p. 157; section 313(e), *infra* p. 182; and section 258B(h)(4) of Gramm-Rudman-Hollings, *infra* p. 571.

[68] Section 13202(c)(1) of the Budget Enforcement Act struck the words "this title and the Congressional Budget and Impoundment Control Act of 1974" that used to be here and inserted "this Act." *See infra* p. 632.

(g)[69] APPROPRIATIONS. -- There are authorized to be appropriated to the Office for each fiscal year such sums as may be necessary to enable it to carry out its duties and functions. Until sums are first appropriated pursuant to the preceding sentence, but for a period not exceeding 12 months following the effective date of this subsection, the expenses of the Office shall be paid from the contingent fund of the Senate, in accordance with the paragraph relating to the contingent fund of the Senate under the heading "UNDER LEGISLATIVE" in the Act of October 1, 1888 (28 Stat. 546; 2 U.S.C. 68), and upon vouchers approved by the Director.

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[69] Section 13202(a) of the Budget Enforcement Act redesignated this subsection -- which used to be subsection (f) -- as subsection (g) (*see infra* p. 632), so as to create room for the transfer to this section of what used to be section 273 of Gramm-Rudman-Hollings.

DUTIES AND FUNCTIONS

SEC. 202.[70] (a) ASSISTANCE TO BUDGET COMMITTEES. -- It shall be the duty and function of the Office to provide to the Committees on the Budget of both Houses information which will assist such committees in the discharge of all matters within their jurisdictions,[71] including

(1) information with respect to the budget, appropriation bills,[72] and other bills authorizing or providing new[73] budget authority[74] or tax expenditures,[75]

(2) information with respect to revenues, receipts, estimated future revenues and receipts, and changing revenue conditions, and

(3) such related information as such Committees may request.

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[70] Section 202 is codified as amended at 2 U.S.C. § 602 (1988).

[71] For a discussion of the Budget Committee's jurisdiction, see *infra* note 360 (at the end of section 306).

[72] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

[73] Section 13112(a)(3) of the Budget Enforcement Act added the word "new" here. *See infra* p. 624.

[74] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[75] Section 3(3) defines "tax expenditures." *See supra* p. 15.

(b) ASSISTANCE TO COMMITTEES ON APPROPRIATIONS, WAYS AND MEANS, AND FINANCE. -- At the request of the Committee on Appropriations of either House, the Committee on Ways and Means of the House of Representatives, or the Committee on Finance of the Senate, the Office shall provide to such Committee any information which will assist it in the discharge of matters within its jurisdiction, including information described in clauses (1) and (2) of subsection (a)[76] and such related information as the Committee may request.

(c) ASSISTANCE TO OTHER COMMITTEES AND MEMBERS. --

(1) At the request of any other committee of the House of Representatives or the Senate or any joint committee of the Congress, the Office shall provide to such committee or joint committee any information compiled in carrying out clauses (1) and (2) of subsection (a),[77] and, to the extent practicable, such additional information related to the foregoing as may be requested.

(2) At the request of any Member of the House or Senate, the Office shall provide to such member any information compiled in carrying out clauses (1) and (2) of subsection (a),[78] and, to the extent available, such additional information related to the foregoing as may be requested.

(d) ASSIGNMENT OF OFFICE PERSONNEL TO COMMITTEES AND JOINT COMMITTEES. -- At the request of the Committee on the Budget of either House, personnel of the Office shall be assigned, on a temporary basis, to assist such committee. At the request of any other committee of either House or any joint committee of the Congress, personnel of the Office may be

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[76] *See supra* p. 34.

[77] *See supra* p. 34.

[78] *See supra* p. 34.

assigned, on a temporary basis, to assist such committee or joint committee with respect to matters directly related to the applicable provisions of subsection (b)[79] or (c).[80]

(e) TRANSFER OF FUNCTIONS OF JOINT COMMITTEE ON REDUCTION OF FEDERAL EXPENDITURES. --

(1) The duties, functions, and personnel of the Joint Committee on Reduction of Federal Expenditures are transferred to the Office, and the Joint Committee is abolished.

(2) Section 601 of the Revenue Act of 1941 (55 Stat. 726) is repealed.

(f) REPORTS TO BUDGET COMMITTEES. --

(1) On or before February 15[81] of each year, the Director shall submit to the Committees on the Budget of the House of Representatives and the Senate a report,[82] for the fiscal year commencing on October 1 of that year, with respect to fiscal policy, including

(A) alternate levels of total revenues, total new budget authority,[83] and total outlays[84] (including

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[79] *See supra* p. 35.

[80] *See supra* p. 35.

[81] Section 221(a) of Gramm-Rudman-Hollings moved up this deadline from April 1, as originally enacted in 1974, to the current February 15. *See infra* p. 351.

[82] In practice, the Congressional Budget Office issues three reports to address the requirements of this paragraph. It generally entitles the most general report as "The Economic and Budget Outlook: Fiscal Years ____-____."

[83] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[84] Section 3(1) defines "outlays." *See supra* p. 11.

related surpluses and deficits[85]), and

(B) the levels of tax expenditures[86] under existing law,

taking into account projected economic factors and any changes in such levels based on proposals in the budget submitted by the President for such fiscal year.[87] Such report shall also include a discussion of national budget priorities, including alternative ways of allocating budget authority[88] and budget outlays[89] for such fiscal year among major programs or functional categories, taking into account how such alternative allocations will meet major national needs and affect balanced growth and development of the United States.[90]

(2) The Director shall from time to time submit to the Committees on the Budget of the House of Representatives and the Senate such further reports (including reports revising[91] the report required by paragraph (1)[92]) as may be necessary or appropriate to provide such Committees with information, data, and analyses for the performance of their duties and functions.

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[85] Section 3(6) defines "deficit." *See supra* p. 16.

[86] Section 3(3) defines "tax expenditures." *See supra* p. 15.

[87] In response to this provision and a request of the Committee on Appropriations, the Congressional Budget Office generally prepares a report that it entitles "An Analysis of the President's Budgetary Proposals for Fiscal Year ____."

[88] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[89] Section 3(1) defines "budget outlays." *See supra* p. 11.

[90] In response to this provision, the Congressional Budget Office generally prepares a report that it entitles "Reducing the Deficit: Spending and Revenue Options."

[91] In response to this provision, the Congressional Budget Office generally prepares an August report that it entitles "The Economic and Budget Outlook: An Update."

[92] *See supra* pp. 36-37.

(3)[93] On or before January 15 of each year, the Director, after consultation with the appropriate committees of the House of Representatives and Senate, shall submit to the Congress a report listing

(A) all programs and activities funded during the fiscal year ending September 30 of that calendar year for which authorizations for appropriations have not been enacted for that fiscal year, and

(B) all programs and activities for which authorizations for appropriations have been enacted for the fiscal year ending September 30 of that calendar year, but for which no authorizations for appropriations have been enacted for the fiscal year beginning October 1 of that calendar year.

(g) Use of Computers and Other Techniques. -- The Director may equip the Office with up-to-date computer capability (upon approval of the Committee on House Administration of the House of Representatives and the Committee on Rules and Administration of the Senate), obtain the services of experts and consultants in computer technology, and develop techniques for the evaluation of budgetary requirements.

(h)[94] Studies. -- The Director shall conduct continuing studies to enhance comparisons of budget outlays,[95] credit authority,[96] and tax expenditures.[97]

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[93] Section 221(b) of Gramm-Rudman-Hollings added paragraph (3). *See infra* p. 351.

[94] Section 221(c) of Gramm-Rudman-Hollings added subsection (h). *See infra* p. 352.

[95] Section 3(1) defines "budget outlays." *See supra* p. 11.

[96] Section 3(10) defines "credit authority." *See supra* p. 19.

[97] Section 3(3) defines "tax expenditures." *See supra* p. 15.

PUBLIC ACCESS TO BUDGET DATA[98]

SEC. 203.[99] (a) RIGHT TO COPY. -- Except as provided in subsections (c)[100] and (d),[101] the Director shall make all information, data, estimates. and statistics obtained under sections 201(d)[102] and 201(e)[103] available for public copying during normal business hours, subject to reasonable rules and regulations, and shall to the extent practicable, at the request of any person, furnish a copy of any such information, data, estimates, or statistics upon payment by such person of the cost of making and furnishing such copy.

(b) INDEX. -- The Director shall develop and maintain filing, coding, and indexing systems that identify the information, data, estimates, and statistics to which subsection (a)[104] applies and shall make such systems available for public use during normal business hours.

(c) EXCEPTIONS. -- Subsection (a)[105] shall not apply to information, data, estimates, and statistics --

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[98] Compare the similar provisions intended to govern the Senate Budget Committee in section 102(d) (*see supra* note 62), and of the Government in the Sunshine Act, Pub. L. No. 94-409, 90 Stat. 1241 (Sept. 13, 1976) (codified as amended at 5 U.S.C. § § 551, 552, 552b, 556, 557 & 39 U.S.C. § 410 (1988)).

[99] Section 203 is codified as amended at 2 U.S.C. § 603 (1988).

[100] *See infra* pp. 39-40.

[101] *See infra* p. 40.

[102] *See supra* p. 31.

[103] *See supra* p. 31.

[104] *See supra* p. 39.

[105] *See supra* p. 39.

(1) which are specifically exempted from disclosure by law; or

(2) which the Director determines will disclose --

(A) matters necessary to be kept secret in the interests of national defense or the confidential conduct of the foreign relations of the United States;

(B) information relating to trade secrets or financial or commercial information pertaining specifically to a given person if the information has been obtained by the Government on a confidential basis, other than through an application by such person for a specific financial or other benefit, and is required to be kept secret in order to prevent undue injury to the competitive position of such person; or

(C) personnel or medical data or similar data the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

unless the portions containing such matters, information, or data have been excised.

(d) INFORMATION OBTAINED FOR COMMITTEES AND MEMBERS. -- Subsection (a)[106] shall apply to any information, data, estimates, and statistics obtained at the request of any committee, joint committee, or Member unless such committee, joint committee, or Member has instructed the Director not to make such information, data, estimates, or statistics available for public copying.

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[106] *See supra* p. 39.

TITLE III
CONGRESSIONAL BUDGET PROCESS

TIMETABLE

SEC. 300.[107] The timetable with respect to the congressional budget process for any fiscal year is as follows:[108]

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[107] Section 300 is codified as amended at 2 U.S.C. § 631.

[108] As the Congress has enacted this timetable as an exercise of its rule-making powers (to the extent that it sets dates for the Congress), *see* § 904 *infra* p. 295, no illegality flows from its violation. Furthermore, the failure to comply with a deadline has no effect on points of order under the Congressional Budget Act. *See* 132 CONG. REC. S10,694 (Aug. 7, 1986).

Section 201(b) of Gramm-Rudman-Hollings revised section 300. *See infra* p. 345. As originally enacted in 1974, section 300 read as follows:

> SEC. 300. The timetable with respect to the congressional budget process for any fiscal year is as follows:

On or before:	**Action to be completed:**
November 10	President submits current services budget.
15th day after Congress meets	President submits his budget.
March 15	Committees and joint committees submit reports to Budget Committees.
April 1	Congressional Budget Office submits report to Budget Committees.
April 15	Budget Committees report first concurrent resolution on the budget to their Houses.
May 15	Committees report bills and resolutions authorizing new budget authority.
May 15	Congress completes action on concurrent resolution on the budget.
7th day after Labor Day	Congress completes action on bills and resolutions providing new budget authority and new spending authority.
September 15	Congress completes action on second required concurrent resolution on the budget.

(continued...)

On or before:	**Action to be completed:**
First Monday in February[109]	**President submits his budget.[110]**
February 15	**Congressional Budget Office submits report to Budget Committees.[111]**
February 25[112]	**Committees submit views and esti-**

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[108](...continued)

September 25	Congress completes action on reconciliation bill or resolution, or both, implementing second required concurrent resolution.
October 1	Fiscal year begins.

[109] Section 13112(a)(4) of the Budget Enforcement Act changed this reference from "First Monday after January 3" to "First Monday in February" (*see infra* p. 624) to conform to the change that section 13112(c)(1) of the Budget Enforcement Act made to section 1105(a) of title 31 of the United States Code. *See infra* p. 626. Where section 1105(a) used to require the President to submit the budget "On or before the first Monday after January 3 of each year (or on or before February 5 in 1986)" it now requires the President to submit the budget "On or after the first Monday in January but not later than the first Monday in February of each year." *Id.*

Notwithstanding the requirement under the law prior to enactment of the Budget Enforcement Act, Congress provided for a delay of the submission of the President's budget in 1988 from January 4 to February 16. *See* 133 CONG. REC. S18,689 (Dec. 21, 1987) (colloquy between the Chairman of the Budget Committee, Senator Chiles, and the Majority Leader, Senator Byrd).

Congress again provided for a delay of the submission of the President's budget in 1990 from January 8 to January 22. The adjournment resolution for the 101st Congress provided:

> Notwithstanding the provisions of section 1105 of title 31, United States Code, the President shall transmit to the Congress not later than January 22, 1990, the Budget for fiscal year 1991.

Sec. 4, H.J. Res. 449, 101st Cong., 1st Sess., 135 CONG. REC. S16,944 (Nov. 21, 1989).

[110] Section 1105 of title 31 of the U.S. Code sets forth this requirement.

[111] Section 202(f)(1) sets forth this requirement. *See supra* p. 36.

[112] This should read "Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code." Section 13112(a)(5) of the Budget Enforcement Act (*see infra* p. 624) changed the deadline for committees' views and estimates in section 301(d) of the Congressional Budget Act (*see infra* pp. 57-60) from "[o]n or before February 25 of each year" to "[w]ithin 6 weeks after the President submits a (continued...)

	mates to Budget Committees.[113]
April 1	**Senate Budget Committee reports concurrent resolution on the budget.**[114]

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[112](...continued)
budget under section 1105(a) of title 31, United States Code," as section 13112(c)(1) of the Budget Enforcement Act (*see infra* p. 626) changed the deadline for the President's budget submission in section 1105(a) of title 31 of the United States Code from "[o]n or before the first Monday after January 3 of each year" to "[o]n or after the first Monday in January but not later than the first Monday in February of each year."

[113] Section 301(d) sets forth this requirement. *See infra* p. 57.

[114] If the Senate Budget Committee has not completed action on the budget resolution by this date, then on that date, the Senate will discharge the Committee of any budget resolution that the presiding officer had referred to the Committee and place it on the calendar. *See* 129 CONG. REC. S4,726 (Apr. 15, 1983); 1984 SEN. J. 216 (Apr. 18, 1984); 136 CONG. REC. S3,696 (Apr. 2, 1990). The Senate will also discharge and place on the calendar any budget resolution submitted after April 1 until the Budget Committee has reported a resolution. *See* 136 CONG. REC. S4,287 (Apr. 5, 1990).

As originally enacted in 1974 and as in force on April 15, 1983, section 300 contained an entry for April 15 stating: "Budget Committees report first concurrent resolution on the budget to their Houses." *See supra* note 108. (Section 201(b) of Gramm-Rudman-Hollings changed the entry to read as it does now. *See infra* p. 345.) On March 24, 1983, the Senate received the fiscal year 1984 budget resolution, H. Con. Res. 91, 98th Cong., 1st Sess. (1983), from the House of Representatives, and the presiding officer referred it to the Budget Committee. 129 CONG. REC. S3,969 (Mar. 24, 1983). When, on April 15, 1983, the Senate Budget Committee had failed to act on the resolution, the Senate discharged the resolution from the Committee and placed it on the calendar. 129 CONG. REC. S4,726 (April 15, 1983).

Again, on April 9, 1984, the Senate received the fiscal year 1985 budget resolution, H. Con. Res. 280, 98th Cong., 2d Sess. (1984), from the House of Representatives, and the presiding officer referred it to the Budget Committee. 130 CONG. REC. S4,150 (Apr. 9, 1984). When the Senate Budget Committee failed to act on the resolution by April 15, 1990 (on which date the Senate was adjourned), the Senate discharged the resolution from the Committee and placed it on the calendar. 1984 SEN. J. 216 (Apr. 18, 1984). (The Senate discharged H. Con. Res. 280 on April 18, 1984, the date provided for committees to report bills. April 18 was also, coincidentally, the date on which the Senate Budget Committee reported a budget resolution, S. Con. Res. 106. 130 CONG. REC. S4,722 (Apr. 24, 1984).)

Again, on March 29, 1990, the Chairman of the Budget Committee, Senator Sasser, submitted a concurrent resolution on the budget, S. Con. Res. 110, 101st Cong., 2d Sess., 136 CONG. REC. S3,555-60 (Mar. 29, 1990), and the presiding officer referred it to the Budget Committee. 136 CONG. REC. S3,555 (Mar. 29, 1990). When the Senate Budget Committee failed to act on the resolution by April 1, 1990 (a Sunday), the Senate dis-

(continued...)

April 15	**Congress completes action on concurrent resolution on the budget.[115]**
May 15	**Annual appropriation bills[116] may be considered in the House.[117]**
June 10	**House Appropriations Committee reports last annual appropriation bill.[118]**
June 15	**Congress completes action on reconciliation legislation.[119]**
June 30	**House completes action on annual appropriation bills.**
October 1	**Fiscal year begins.[120]**

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[114](...continued)
charged the resolution from the Committee "[p]ursuant to section 300 of the Congressional Budget Act of 1974," and placed it on the calendar. 136 Cong. Rec. S3,696 (Apr. 2, 1990).

Also in 1990, on April 5, Senator Hollings submitted a concurrent resolution on the budget, S. Con. Res. 119, 101st Cong., 2d Sess., 136 Cong. Rec. S4,287-91 (Apr. 5, 1990), and the presiding officer referred it to the Budget Committee. 136 Cong. Rec. S4,209, S4,287 (Apr. 5, 1990). As it was after April 1 and the Budget Committee had not yet reported a budget resolution, the Senate discharged the resolution from the Committee and placed it on the calendar on the same day that Senator Hollings submitted it. 136 Cong. Rec. S4,287 (Apr. 5, 1990).

[115] Section 301(a) sets forth this requirement. *See infra* p. 46.

The failure to complete the budget resolution by this deadline has no effect on points of order under the Congressional Budget Act. 132 Cong. Rec. S10,694 (Aug. 7, 1986).

For a table listing historical completion dates, see *infra* note 122.

[116] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

[117] Section 303(b) provides this exception. *See infra* p. 89.

[118] Section 307 sets forth this requirement. *See infra* p. 122.

[119] Section 310(f)(1) used to set forth this requirement. *See infra* note 465.

For a table listing historical completion dates, see *infra* note 467.

[120] Section 254(a) of Gramm-Rudman-Hollings (*see infra* p. 474) and title 31 of the United States Code create the following, additional deadlines:

(continued...)

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[120](...continued)

Date:	**Action to be completed:**
January 21	Notification regarding optional adjustment of maximum deficit amount.
5 days before the President's budget submission	CBO sequestration preview report.
The President's budget submission	OMB sequestration preview report.
July 15	The President submits to Congress the mid-session budget review.
August 10	Notification regarding military personnel.
August 15	CBO sequestration update report.
August 20	OMB sequestration update report.
10 days after end of session	CBO final sequestration report.
15 days after end of session	OMB final sequestration report; Presidential order.
30 days later	GAO compliance report.

ANNUAL ADOPTION OF CONCURRENT RESOLUTION ON THE BUDGET

SEC. 301.[121] (a) Content of Concurrent Resolution on the Budget. -- On or before April 15[122] of each year, the Congress shall complete action on a concurrent resolution on the budget for the fiscal year beginning on October 1 of such year. The concurrent resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of such year, and planning levels for each of the two ensuing fiscal years, for

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[121] Section 301 is codified as amended at 2 U.S.C. § 632. Section 201(b) of Gramm-Rudman-Hollings revised section 301. *See infra* p. 345.

[122] The failure to complete the budget resolution by this deadline has no effect on points of order under the Congressional Budget Act. *See* 132 Cong. Rec. S10,694 (Aug. 7, 1986).

Historically, Congress has completed budget resolutions as in the following table. (Note that until the enactment of Gramm-Rudman-Hollings, section 301 set forth a May 15 deadline for Congress to act. *See supra* note 108.)

Adoption Dates of Budget Resolutions

Fiscal year	Budget resolution adopted
1976	May 14, 1975 (H. Con. Res. 218)
1977	May 13, 1976 (S. Con. Res. 109)
1978	May 17, 1977 (S. Con. Res. 19)
1979	May 17, 1978 (S. Con. Res. 80)
1980	May 24, 1979 (H. Con. Res. 107)
1981	June 12, 1980 (H. Con. Res. 307)
1982	May 21, 1981 (H. Con. Res. 115)
1983	June 23, 1982 (S. Con. Res. 92)
1984	June 23, 1983 (H. Con. Res. 91)
1985	October 1, 1984 (H. Con. Res. 280)
1986	August 1, 1985 (S. Con. Res. 32)
1987	May 15, 1986 (H. Con. Res. 337)
1988	June 25, 1987 (H. Con. Res. 93)
1989	June 6, 1988 (H. Con. Res. 268)
1990	May 18, 1989 (H. Con. Res. 106)
1991	October 9, 1991 (H. Con. Res. 310)

the following[123] --

(1) totals of new budget authority,[124] budget outlays,[125] direct loan obligations, and primary loan guarantee commitments;

(2) total Federal revenues and the amount, if any, by which the aggregate level of Federal revenues should be increased or decreased by bills and resolutions to be reported by the appropriate committees;

(3) the surplus or deficit[126] in the budget;

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[123] The Chair will not look to the effect of language contained in a concurrent resolution on the budget reported by the Budget Committee, but will look to its form. 127 CONG. REC. S2,754 (1981); Senate Precedent PRL19810326-001 (Mar. 26, 1981) (LEGIS, Rules database). On March 26, 1981, during consideration of S. Con. Res. 9, the Third Concurrent Resolution on the Budget for Fiscal Year 1981, Senator Hatfield posed the following parliamentary inquiry of the Chair (Senator Humphrey of New Hampshire):

> Mr. HATFIELD. . . . First, before that, would the Chair also comment or observe that the changing of those three words in no way changes the results of the resolution?
>
> The PRESIDING OFFICER. The Chair cannot look to the results of the resolution, only to the language.
>
> Mr. HATFIELD. Will the chair speak louder?
>
> The PRESIDING OFFICER. The Chair could not look to the results of the resolution only to the language. When the language conforms to the Budget Act then no point of order lies as to the language.
>
> Mr. HATFIELD. The Chair, in effect, then was commenting on form rather than substance, is that correct?
>
> The PRESIDING OFFICER. That is the function of the Chair.

127 CONG. REC. S2,754 (1981).

[124] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[125] Section 3(1) defines "budget outlays." *See supra* p. 11.

[126] Section 3(6) defines "deficit." *See supra* p. 16.

(4) new budget authority,[127] budget outlays,[128] direct loan obligations, and primary loan guarantee commitments for each major functional category,[129] based on allocations of the total levels set forth pursuant to paragraph (1);

(5) the public debt;[130]

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[127] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[128] Section 3(1) defines "budget outlays." *See supra* p. 11.

[129] Section 911(b) of title 42 of the United States Code provides for a separate major functional category for Medicare. Note that the content of that functional category changes in fiscal year 1993. *See supra* note 1536.

Section 802, as originally enacted, while not addressing the congressional budget, did address the alteration of functional categories in the President's budget. *See infra* note 876. The substance of section 802 is codified at section 1104(c) of title 31 of the United States Code, which now states:

> (c) When the President makes a basic change in the form of the budget, the President shall submit with the budget information showing where items in the budget for the prior fiscal year are contained in the present budget. However, the President may change the functional categories in the budget only in consultation with the Committees on Appropriations and on the Budget of both Houses of Congress. Committees of the House of Representatives and Senate shall receive prompt notification of all such changes.

31 U.S.C. § 1104(c) (1988).

[130] The public debt limit is set at 31 U.S.C. § 3101 (1988).

Rule XLIX of the Rules of the House of Representatives provides that the House automatically passes a joint resolution increasing the statutory limit on the public debt whenever it adopts a budget resolution that includes an increase in the limit. Rule XLIX provides:

> RULE XLIX.
> ESTABLISHMENT OF STATUTORY LIMIT
> ON THE PUBLIC DEBT
>
> 1. Upon the adoption by Congress (under section 301 or 304 of the Congressional Budget Act of 1974) of any concurrent resolution on the budget setting forth as the appropriate level of the public debt for the period to which such concurrent resolution relates an amount which is different from the amount of the statutory limit on the public debt that would otherwise be in effect for such period, the enrolling clerk of the House of Representatives shall prepare an engrossment of a joint resolution, in the form prescribed in clause 2, increasing or decreasing the statutory limit on the public debt. The vote by which the conference report on the concurrent resolution on the budget was

(continued...)

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[130] (...continued)
agreed to in the House (or by which the concurrent resolution itself was adopted in the House, if there is no conference report) shall be deemed to have been a vote in favor of such joint resolution upon final passage in the House of Representatives. Upon the engrossment of such joint resolution it shall be deemed to have passed the House of Representatives and been duly certified and examined; the engrossed copy shall be signed by the Clerk and transmitted to the Senate for further legislative action; and (upon final passage by both Houses) the joint resolution shall be signed by the presiding officers of both Houses and presented to the President for his signature (and otherwise treated for all purposes) in the manner provided for bills and joint resolutions generally.

2. The matter after the resolving clause in any joint resolution described in clause 1 shall be as follows: "That subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof '$__________'", with the blank being filled in with a limitation equal to the appropriate level of the public debt as set forth, pursuant to section 301(a)(5) of the Congressional Budget Act of 1974, in the concurrent resolution on the budget (whether such resolution was adopted under section 301, 304, or 310 of such Act). Only one joint resolution shall be prepared under clause 1 upon the adoption of any concurrent resolution on the budget; and, if the concurrent resolution set forth a different appropriate level of the public debt (pursuant to such section 301(a)(5)) for each of two separate periods, the blank referred to in the preceding sentence shall be filled in with both the limitation which is to apply for the later of the two periods (specifying the date on which that limitation is to take effect) and the limitation which is to apply for the earlier of such periods.

3. The reports of the Committee on the Budget of the House of Representatives accompanying any concurrent resolution on the budget under section 301(d), as well as the joint explanatory statement accompanying the conference report on any concurrent resolution on the budget, shall contain a clear statement of the effect under this rule that the adoption by both the House and the Senate of such concurrent resolution in the form in which it is being reported (and the adoption of the joint resolution thereupon prepared and enrolled under clause 1) would have upon the statutory limit on the public debt. It shall not be in order in the House of Representatives at any time to consider or adopt any concurrent resolution on the budget (or agree to any conference report thereon) if at that time the report accompanying such concurrent resolution (or the joint statement accompanying such conference report) does not comply with the requirements of this clause.

4. Nothing in this section shall be construed as limiting or otherwise affecting the power of the House of Representatives or the Senate to consider and pass a bill which (without regard to the procedures under clause 1) changes the statutory limit on the public debt most recently established under this rule or otherwise; and the rights of Members and committees of the House with respect to the introduction, consideration, and reporting of any such bill shall be determined as though this rule had not been adopted.

(continued...)

(6)[131] For purposes of Senate enforcement under this title, outlays[132] of the old-age, survivors, and disability insurance program established under title II[133] of the Social Security Act for the fiscal year of the resolution and for each of the 4 succeeding fiscal years; and

(7)[134] For purposes of Senate enforcement under this title, revenues[135] of the old-age, survivors, and disability insurance program established under title II[136] of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986) for the fiscal year of the resolution and for each of the 4 succeeding fiscal years.

The concurrent resolution shall not include the outlays and

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[130](...continued)

> 5. As used in this rule, the term "statutory limit on the public debt" means the maximum face amount of obligations issued under authority of chapter 31 of title 31, United States Code, and obligations guaranteed as to principal and interest by the United States (except such guaranteed obligations as may be held by the Secretary of the Treasury), determined under section 3101(b) of title 31 after the application of section 3101(a), title 31 which may be outstanding at any one time.

RULES OF THE HOUSE OF REPRESENTATIVES Rule XLIX (1988).

[131] Section 13303(a) of the Budget Enforcement Act added this paragraph. *See infra* p. 669.

[132] This paragraph implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act."

[133] Title II of the Social Security Act is codified as amended at 42 U.S.C. §§ 401-433 (1988).

[134] Section 13303(a) of the Budget Enforcement Act added this paragraph. *See infra* p. 669.

[135] This paragraph implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)."

[136] Title II of the Social Security Act is codified as amended at 42 U.S.C. §§ 401-433 (1988).

revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit[137] totals required by this subsection or in any other surplus or deficit totals required by this title.[138]

(b) ADDITIONAL MATTERS IN CONCURRENT RESOLUTION. -- The concurrent resolution on the budget may --

(1) set forth, if required by subsection (f),[139] the calendar year in which, in the opinion of the Congress, the goals for reducing unemployment set forth in section 4(b)[140]

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[137] Section 3(6) defines "deficit." *See supra* p. 16.

[138] Section 13301(b) of the Budget Enforcement Act added this last sentence. *See infra* p. 659.

[139] *See infra* pp. 64-67.

[140] Section 4(b) of the Employment Act of 1946 provides (as amended):

(b) Interim numerical goals for initial Economic Reports

The medium-term goals in the first three Economic Reports and, subject to the provisions of subsection (d) of this section, in each Economic Report thereafter shall include (as part of the five-year goals in each Economic Report) interim numerical goals for --

(1) reducing the rate of unemployment, as set forth pursuant to section 3(d) of this Act, to not more than 3 per centum among individuals aged twenty and over and 4 per centum among individuals aged sixteen and over within a period not extending beyond the fifth calendar year after the first such Economic Report;

(2) reducing the rate of inflation, as set forth pursuant to section 1022(e) of this title, to not more than 3 per centum within a period not extending beyond the fifth calendar year after the first such Economic Report: *Provided*, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment; and

(3) reducing the share of the Nation's gross national product accounted for by Federal outlays to 21 per centum or less by 1981, and to 20 per centum or less by 1983 and thereafter, or the lowest level consistent with national needs and priorities: *Provided*, That

(continued...)

of the Employment Act of 1946 should be achieved;

(2) include reconciliation directives described in

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[140](...continued)

> policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

For purposes of this subsection, the first Economic Report shall be the Report issued in the first calendar year after October 27, 1978.

15 U.S.C. § 1022a(b).

Section 4(d) of the Employment Act of 1946 (to which section 4(b) refers) states:

(d) Review by President; report to Congress; modification of timetables.

> In the second Economic Report after October 27, 1978, the President shall review the numerical goals and timetables for the reduction of unemployment, inflation, and Federal outlays as a proportion of gross national product, and the goal of balancing the Federal budget; report to the Congress on the degree of progress being made, the programs and policies being used, and any obstacles to achieving such goals and timetables; and, if necessary, propose corrective economic measures toward achievement of such goals and timetables: *Provided*, That beginning with the second Report and in any subsequent Reports, if the President finds it necessary, the President may recommend modification of the timetable or timetables for the achievement of the goals provided for in subsection (b) and the annual numerical goals to make them consistent with the modified timetable or timetables, and the Congress may take such action as it deems appropriate consistent with title III of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3131 et seq.].

15 U.S.C. § 1022a(d) (1988).

Section 3(d) of the Employment Act of 1946 (to which section 4(b)(1) of that Act refers) states :

(d) Rate of Unemployment.

> For the purposes of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3101 et seq.], the percentage rate of unemployment [i]s a percentage of the civilian labor force as set forth by the Bureau of Labor Statistics in the Department of Labor as computed under the procedures in effect as of the date of enactment of this Act.

15 U.S.C. § 1022(d) (1988). The enactment date to which section 3(d) refers is October 27, 1978.

section 310;[141]

(3) require a procedure[142] under which all or certain bills or resolutions providing new budget authority[143] or new entitlement authority[144] for such fiscal year shall not be enrolled until the Congress has completed action on any reconciliation bill or reconciliation resolution[145] or both required by such concurrent resolution to be reported in accordance with section 310(b);[146]

(4) set forth such other matters, and require such other procedures, relating to the budget, as may be

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[141] *See infra* pp 130-146. Budget resolutions for fiscal years 1981, 1982, 1983, 1984, 1986, 1987, 1988, 1990, and 1991 have included reconciliation instructions.

[142] For example:

> SEC. 7. No bill or resolution providing new budget authority for fiscal year 1983 or providing new spending authority described in section 401(c)(2)(C) of the Congressional Budget Act of 1974 in excess of the allocation to or report by a committee or subcommittee pursuant to section 302 of the Budget Act shall be enrolled until Congress has completed action on the Second Budget Resolution for that year as required to be reported under section 310(a) of the Budget Act.

S. Con. Res. 92, 97th Cong., 2d Sess., § 7 (1982).

Budget resolutions for 1981, 1982, 1983, and 1984 contained delayed enrollment provisions. The first 1983 budget resolution exempted legislation dealing with certain trust funds from its delayed enrollment provision.

[143] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[144] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204). For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 609.

[145] Section 310(b) defines "reconciliation resolution." *See infra* pp. 134-136.

[146] *See infra* pp. 134-136. Sections 310(b) and 301(b)(3) empower reconciliation provisions in a budget resolution to direct the development of a reconciliation resolution. Such a reconciliation resolution could direct the Clerk of the House or the Secretary of the Senate to revise certain bills on which enrollment has been delayed pursuant to section 301(b)(3). Congress has not included this reconciliation resolution procedure in any budget resolution.

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appropriate to carry out the purposes of this Act;[147]

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[147] Some refer to this paragraph as the "elastic clause." Section 2 sets forth the purposes of this Act as:

> (1) to assure effective congressional control over the budgetary process;
>
> (2) to provide for congressional determination each year of the appropriate level of Federal revenues and expenditures;
>
> (3) to provide a system of impoundment control;
>
> (4) to establish national budget priorities; and
>
> (5) to provide for the furnishing of information by the executive branch in a manner that will assist the Congress in discharging its duties.

See supra p. 10.

In addition, the concurrent resolution on the budget, like any concurrent resolution, may include "sense of the Congress" and "sense of the Senate" provisions. These provisions state the opinion of the Congress or the Senate and have no binding effect. They must be within the jurisdiction of the Budget Committee in order for the Committee to report the language. Thus, the budget resolution may include any "sense of the Congress" or "sense of the Senate" provision dealing with budgetary policy.

Many "sense of the Congress" and "sense of the Senate" provisions have been included in budget resolutions, including provisions on:

- tax reform;
- tax law enforcement;
- monetary policy;
- Federal employment policy;
- Congressional Budget Office scorekeeping;
- farm loss deductions;
- limitations on benefits to aliens;
- military retirement programs;
- limiting the level of credit activities through the appropriations process;
- coverage of off-budget and credit activities in budget resolutions;
- Federal Financing Bank activities;

(continued...)

(5)[148] include a heading entitled "Debt Increase as Measure of Deficit"[149] in which the concurrent resolution shall set forth the amounts by which the debt subject to limit (in section 3101 of title 31 of the United States Code) has increased or would increase in each of the relevant fiscal years;

(6)[150] include a heading entitled "Display of Federal Retirement Trust Fund Balances" in which the concurrent resolution shall set forth the balances of the Federal retirement trust funds;

(7)[151] set forth pay-as-you-go procedures for the Senate whereby --

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[147] (...continued)

- international monetary conference;
- the Grace Commission;
- the National Commission on Social Security Reform;
- early action by Senate committees to meet reconciliation instructions; and
- inflationary effects of Federal regulations.

[148] Section 13203 of the Budget Enforcement Act added this paragraph. *See infra* p. 633. The statement of managers accompanying the conference report on the Budget Enforcement Act explains the change briefly: "Following the Senate bill, the conference agreement allows for display of the increase in the debt as a measure of the deficit . . . ." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,170 (1990).

[149] Section 3(6) defines "deficit." *See supra* p. 16.

[150] Section 13203 of the Budget Enforcement Act added this paragraph. *See infra* p. 633. The statement of managers accompanying the conference report on the Budget Enforcement Act explains the change briefly: "Following the Senate bill, the conference agreement allows for . . . display of Federal retirement trust fund balances . . . ." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,170 (1990).

[151] Section 13204 of the Budget Enforcement Act added this paragraph. *See infra* p. 634. The statement of managers accompanying the conference report on the Budget Enforcement Act explains the change briefly: "Following the Senate bill, the conference agreement allows for . . . the creation in budget resolutions of pay-as-you-go provisions similar to reserve funds established in budget resolutions since 1987." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,170 (1990).

(A) budget authority[152] and outlays[153] may be allocated to a committee for legislation that increases funding for entitlement and mandatory spending programs within its jurisdiction if that committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in the concurrent resolution on the budget, the enactment of such legislation will not increase the deficit[154] (by virtue of either deficit reduction in the bill or previously passed deficit reduction) in the resolution for the first fiscal year covered by the concurrent resolution on the budget, and will not increase the total deficit for the period of fiscal years covered by the concurrent resolution on the budget;

(B) upon the reporting of legislation pursuant to subparagraph (A), and again upon the submission of a conference report on such legislation (if a conference report is submitted), the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this paragraph;

(C) such revised allocations, functional levels, and aggregates shall be considered for the purposes of this Act as allocations, functional levels, and aggregates contained in the concurrent resolution on the budget; and

(D) the appropriate committee shall report appropriately revised allocations pursuant to section

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[152] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[153] Section 3(1) defines "budget outlays." *See supra* p. 11.

[154] Section 3(6) defines "deficit." *See supra* p. 16.

302(b) to carry out this paragraph; and

(8)[155] set forth procedures to effectuate pay-as-you-go in the House of Representatives.

(c) CONSIDERATION OF PROCEDURES OR MATTERS WHICH HAVE THE EFFECT OF CHANGING ANY RULE OF THE HOUSE OF REPRESENTATIVES. -- If the Committee on the Budget of the House of Representatives reports any concurrent resolution on the budget which includes any procedure or matter which has the effect of changing any rule of the House of Representatives, such concurrent resolution shall then be referred to the Committee on Rules with instructions to report it within five calendar days (not counting any day on which the House is not in session). The Committee on Rules shall have jurisdiction to report any concurrent resolution referred to it under this paragraph with an amendment or amendments changing or striking out any such procedure or matter.

(d) VIEWS AND ESTIMATES OF OTHER COMMITTEES. -- Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code,[156] each committee of the House of Representatives having legislative jurisdiction shall submit to the Committee on the Budget of the House and each committee of the Senate having legislative jurisdiction shall submit to the Committee on the Budget of the Senate its views and estimates (as determined by the committee making such submission) with respect to all matters set forth in subsections (a)[157] and (b)[158] which relate to matters within the jurisdiction

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[155] Section 13204 of the Budget Enforcement Act added this paragraph. *See infra* p. 634.

[156] Section 13112(a)(5) of the Budget Enforcement Act (*see infra* p. 624) changed this deadline from "On or before February 25 of each year" to "Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code," as section 13112(c)(1) of the Budget Enforcement Act (*see infra* p. 626) changed the deadline for the President's budget submission in section 1105(a) of title 31 of the United States Code from "[o]n or before the first Monday after January 3 of each year" to "[o]n or after the first Monday in January but not later than the first Monday in February of each year."

[157] *See supra* pp. 46-51.

or functions of such committee. The Joint Economic Committee shall submit to the Committees on the Budget of both Houses its recommendations as to the fiscal policy appropriate to the goals of the Employment Act of 1946.[159] Any other

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[158] (...continued)

[158] *See supra* pp. 51-53.

[159] In this connection, section 1021 of title 15 of the United States Code sets forth several Congressional statements of purposes:

> **§ 1021. Congressional declarations**
>
> **(a) Generally.**
>
> The Congress hereby declares that it is the continuing policy and responsibility of the Federal Government to use all practicable means, consistent with its needs and obligations and other essential national policies,and with the assistance and cooperation of both small and larger businesses, agriculture, labor, and State and local governments, to coordinate and utilize all its plans, functions, and resources for the purpose of creating and maintaining, in a manner calculated to foster and promote free competitive enterprise and the general welfare, conditions which promote useful employment opportunities, including self-employment, for those able, willing, and seeking to work, and promote full employment and production, increased real income, balanced growth, a balanced Federal budget, adequate productivity growth, proper attention to national priorities, achievement of an improved trade balance through increased exports and improvement in the international competitiveness of agriculture, business, and industry, and reasonable price stability as provided in section 1022(b) of this title.
>
> **(b) Full opportunities for employment.**
>
> The Congress further declares and establishes as a national goal the fulfillment of the right to full opportunities for useful paid employment at fair rates of compensation of all individuals able, willing, and seeking to work.
>
> **(c) Inflation.**
>
> The Congress further declares that inflation is a major national problem requiring improved government policies relating to food, energy, improved and coordinated fiscal and monetary management, the reform of outmoded rules and regulations of the Federal Government, the correction of structural defects in the economy that prevent or seriously impede competition in private markets, and other measures to reduce the rate of inflation.
>
> **(d) Coordination of Federal policies and programs.**
>
> The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3101 et seq.] to improve the coordination and integration of the policies and programs of the Federal Government toward achievement of the objectives of such Act through

(continued...)

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[159] (...continued)
better management, increased efficiency, and attention to long-range as well as short-range problems and to balancing the Federal budget.

(e) Federal controls.

The Congress further declares that, although it is the purpose under the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3101 et seq.] to seek diligently and to encourage the voluntary cooperation of the private sector in helping to achieve the objectives of such Act, no provisions of such Act or this Act shall be used, with respect to any portion of the private sector of the economy, to provide for Federal Government control of production, employment, allocation of resources, or wages and prices, except to the extent authorized under other Federal laws.

(f) Expansion of private employment.

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3101 et seq.] to maximize and place primary emphasis upon the expansion of private employment, and all programs and policies under such Act shall be in accord with such purpose. Toward this end, the effort to expand jobs to the full employment level shall be in this order of priority to the extent consistent with balanced growth --

(1) expansion of conventional private jobs through improved use of general economic and structural policies, including measures to encourage private sector investment and capital formation;

(2) expansion of private employment through Federal assistance in connection with the priority programs in such Act;

(3) expansion of public employment other than through the provisions of section 206 of such Act [15 U.S.C. § 3116]; and

(4) when recommended by the President under section 206 of such Act [15 U.S.C. § 3116] and subject to the limitations in such section, the creation of employment through the methods set forth in such section.

(g) Trade deficits.

The Congress further declares that trade deficits are a major national problem requiring a strong national export policy including improved Government policies relating to the promotion, facilitation, and financing of commercial and agricultural exports, Government policies designed to reduce foreign barriers to exports through international negotiation and agreement, Federal support for research, development, and diffusion of new technologies to promote innovation in agriculture, business, and industry, the elimination or modification of Government rules or regulations that burden or disadvantage exports and the national and international competitiveness of

(continued...)

committee of the House of Representatives or the Senate may submit to the Committee on the Budget of its House, and any joint committee of the Congress may submit to the Committees on the Budget of both Houses, its views and estimates with respect to all matters set forth in subsections (a)[160] and (b)[161] which relate to matters within its jurisdiction or functions.

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[159](...continued)
agriculture, business, and industry, the reexamination of antitrust laws and policies when necessary to enable agriculture, business, and industry to meet foreign competition in the United States and abroad, and the achievement of a free and fair international trading system and a sound and stable international monetary order.

(h) Balanced Federal budget.

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 to achieve a balanced Federal budget consistent with the achievement of the medium-term goals specified in section 1022a of this title.

(i) Investment needs of private enterprise.

The Congress further declares that it is the continuing policy and responsibility of the Federal Government, in cooperation with State and local governments, to use all practical means consistent with other essential considerations of national policy to provide sufficient incentives to assure meeting the investment needs of private enterprise, including the needs of small and medium sized businesses, in order to increase the production of goods, the provision of services, employment, the opportunity for profit, the payment of taxes, and to reduce and control inflation. To the extent it is reasonably possible to do so, private enterprise investments in depressed urban and rural areas should be promoted to reduce the high levels of unemployment that exist there.

(j) Reliance on private sector.

The Congress further declares that it is the purpose of the Full Employment and Balanced Growth Act of 1978 [15 U.S.C. § 3101 et seq.] to rely principally on the private sector for expansion of economic activity and creation of new jobs for a growing labor force. Toward this end, it is the purpose of this Act to encourage the adoption of fiscal policies that would establish the share of the gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities.

15 U.S.C. § 1021 (1988).

[160] *See supra* pp. 46-51.

[161] *See supra* pp. 51-53.

(e) HEARINGS AND REPORT. -- In developing the concurrent resolution on the budget referred to in subsection (a)[162] for each fiscal year, the Committee on the Budget of each House shall hold hearings and shall receive testimony from Members of Congress and such appropriate representatives of Federal departments and agencies, the general public, and national organizations as the committee deems desirable. Each of the recommendations as to short-term and medium-term goals set forth in the report submitted by the members of the Joint Economic Committee under subsection (d)[163] may be considered by the Committee on the Budget of each House as part of its consideration of such concurrent resolution, and its report may reflect its views thereon, including its views on how the estimates of revenues and levels of budget authority[164] and outlays[165] set forth in such concurrent resolution are designed to achieve any goals it is recommending. The report accompanying such concurrent resolution shall include, but not be limited to --

(1) a comparison of revenues estimated by the committee with those estimated in the budget submitted by the President;

(2) a comparison of the appropriate levels of total budget outlays[166] and total new budget authority,[167] total direct loan obligations, total primary loan guarantee commitments, as set forth in such concurrent resolution, with those estimated or requested in the budget submitted

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[162] *See supra* pp. 46-51.

[163] *See supra* pp. 57-60.

[164] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[165] Section 3(1) defines "outlays." *See supra* p. 11.

[166] Section 3(1) defines "budget outlays." *See supra* p. 11.

[167] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

by the President;

(3) with respect to each major functional category, an estimate of budget outlays[168] and an appropriate level of new budget authority[169] for all proposed programs and for all existing programs (including renewals thereof), with the estimate and level for existing programs being divided between permanent authority and funds provided in appropriation Acts,[170] and with each such division being subdivided between controllable amounts and all other amounts;

(4) an allocation of the level of Federal revenues recommended in the concurrent resolution among the major sources of such revenues;

(5) the economic assumptions and objectives which underlie each of the matters set forth in such concurrent resolution and any alternative economic assumptions and objectives which the committee considered;

(6) projections (not limited to the following), for the period of five fiscal years beginning with such fiscal year, of the estimated levels of total budget outlays[171] and total new budget authority,[172] the estimated revenues to be received, and the estimated surplus or deficit,[173] if any, for each fiscal year in such period, and the estimated levels of

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[168] Section 3(1) defines "budget outlays." *See supra* p. 11.

[169] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[170] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

[171] Section 3(1) defines "budget outlays." *See supra* p. 11.

[172] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[173] Section 3(6) defines "deficit." *See supra* p. 16.

tax expenditures[174] (the tax expenditures budget) by major functional categories;

(7) a statement of any significant changes in the proposed levels of Federal assistance to State and local governments;

(8) information, data, and comparisons indicating the manner in which, and the basis on which, the committee determined each of the matters set forth in the concurrent resolution;

(9) allocations described in section 302(a);[175] and

(10)[176] an analysis, prepared after consultation with the Director of the Congressional Budget Office, of the concurrent resolution's impact on the international competitiveness of United States business and the United States balance of payments position and shall include the following projections, based upon the best information available at the time, for the fiscal year covered by the concurrent resolution --

(A) the amount of borrowing by the Government in private credit markets;

(B) net domestic savings (defined as personal savings, corporate savings, and the fiscal surplus of State and local governments);

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[174] Section 3(3) defines "tax expenditures." *See supra* p. 15.

[175] *See infra* pp. 70-71.

[176] Section 5302 of the Omnibus Trade and Competitiveness Act of 1988 added paragraph (10). Pub. L. 100-418, § 5302, 102 Stat. 1462-63 (Aug. 23, 1988). Section 5303 of that Act provides that "the amendment made by section 5302 shall be effective for fiscal years 1989, 1990, 1991, and 1992." Pub. L. 100-418, § 5303, 102 Stat. 1463 (Aug. 23, 1988). Compare the parallel requirements for the President's budget submission set forth at 31 U.S.C. § 1105(a)(26) (1988). *See infra* pp. 702-703.

(C) net private domestic investment;

(D) the merchandise trade and current accounts;

(E) the net increase or decrease in foreign indebtedness (defined as net foreign investment); and

(F) the estimated direction and extent of the influence of the Government's borrowing in private credit markets on United States dollar interest rates and on the real effective exchange rate of the United States dollar.

(f) ACHIEVEMENT OF GOALS FOR REDUCING UNEMPLOYMENT.--

(1) If, pursuant to section 4(c)[177] of the Employment

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[177] Section 4(c) of the Employment Act of 1946 states:

(c) Achievement of full employment, balanced budget, zero inflation rate, and 20 per centum level of Federal outlays as a proportion of gross national product for succeeding Economic Reports.

(1) Upon achievement of the 3 and 4 per centum goals specified in subsection (b)(1) of this section, each succeeding Economic Report shall have the goal of achieving as soon as practicable and maintaining thereafter full employment and a balanced budget.

(2) Upon achievement of the 3 per centum goal specified in subsection (b)(2) of this section, each succeeding Economic Report shall have the goal of achieving by 1988 a rate of inflation of zero per centum: *Provided*, That policies and programs for reducing the rate of inflation shall be designed so as not to impede achievement of the goals and timetables specified in clause (1) of this subsection for the reduction of unemployment.

(3) Upon achievement of the 20 per centum goal specified in subsection (b)(3), each succeeding Economic Report shall have the goal of establishing the share of an expanding gross national product accounted for by Federal outlays at a level of 20 per centum or less, or the lowest level consistent with national needs and priorities: *Provided*, That policies and programs for achieving the goal specified in this clause shall be designed so as not to impede achievement of the goals and timetables specified in subsection (b)(1) of this section for the reduction of unemployment.

15 U.S.C. § 1022a(c) (1988). The references to subsection (b) refer to section 4(b), set forth *supra* note 51.

Act of 1946, the President recommends in the Economic Report that the goals for reducing unemployment set forth in section 4(b)[178] of such Act be achieved in a year after the close of the five-year period prescribed by such subsection, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

(2) After the Congress has expressed its opinion pursuant to paragraph (1)[179] as to the year in which the goals for reducing unemployment set forth in section 4(b)[180] of the Employment Act of 1946 can be achieved, if, pursuant to section 4(e)[181] of such Act, the President recommends

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[178] *See supra* note 140.

[179] *See supra* pp. 64-65.

[180] *See supra* note 140.

[181] Section 4(e) of the Employment Act of 1946 states:

> **(e) Interim numerical goals for succeeding Economic Reports.**
>
> If, after achievement of the 3 and 4 per centum goals specified in subsection (b) of this section, the unemployment rate for a year as set forth pursuant to section 1022(d) of this title is more than 3 per centum among individuals aged twenty and over or more than 4 per centum among individuals aged sixteen and over, the next Economic Report after such rate is set forth and each succeeding Economic Report shall include (as part of the five-year goals in each Economic Report) the interim numerical goal of reducing unemployment to not more than the levels specified in subsection (b)(1) of this section as soon as practicable but not later than the fifth calendar year after the first such Economic Report, counting as the first calendar year the year in which such Economic Report is issued: *Provided*, That, if the President finds it necessary, the President may, under the authority provided in subsection (d), recommend modification of the timetable provided for in this subsection for the reduction of unemployment, and for the purposes of section 304 of the Full Employment and Balanced Growth Act of 1978, such recommendation by the President shall be treated as a recommendation made under subsection (d) of this section.

15 U.S.C. § 1022a(e) (1988). Of the sections to which section 4(e) refers, subsections (b) and (d) and section 1022(d) appear *supra* note 140, while section 304 of the Full Employment and Balanced Growth Act of 1978 added relevant sections of the Congressional Budget Act.

in the Economic Report that such goals be achieved in a year which is different from the year in which the Congress has expressed its opinion that such goals should be achieved, either in its action pursuant to paragraph (1)[182] or in its most recent action pursuant to this paragraph, the concurrent resolution on the budget for the fiscal year beginning after the date on which such Economic Report is received by the Congress may set forth the year in which, in the opinion of the Congress, such goals can be achieved.

(3) It shall be in order to amend[183] the provision of such resolution setting forth such year only if the amendment thereto also proposes to alter the estimates, amounts, and levels (as described in subsection (a)[184]) set forth in such resolution in germane[185] fashion in order to be consistent with the economic goals (as described in section 3(a)(2)[186] and 4(b)[187] of the Employment Act of 1946) which

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[182] *See supra* pp. 64-65.

[183] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 275 (regarding section 303(a)).

[184] *See supra* pp. 46-51.

[185] For a discussion of germaneness, see *infra* note 329.

[186] Section 3(a)(2) of the Employment Act of 1946 states:

> **Sec. 1022. Economic Report of President; coverage; supplementary reports; reference to congressional joint committee; percentage rate of unemployment; definitions**
>
> **(a) Time of submission; contents.**
>
> The President shall transmit to the Congress during the first twenty days of each regular session, with copies transmitted to the Governor of each State and to other appropriate State and local officials, an economic report (hereinafter in this Act referred to as the "Economic Report" together with the annual report of the Council of Economic Advisers submitted in accord with section 1023(c) of this title, setting forth --
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> . . .

(continued...)

such amendment proposes can be achieved by the year specified in such amendment.

(g)[188] ECONOMIC ASSUMPTIONS. --

(1) It shall not be in order[189] in the Senate to consider any concurrent resolution on the budget for a fiscal year,[190] or any amendment

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[186](...continued)

> (2)(A) annual numerical goals for employment and unemployment, production, real income, productivity, Federal outlays as a proportion of gross national product, and prices for the calendar year in which the Economic Report is transmitted and for the following calendar year, designated as short-term goals, which shall be consistent with achieving as rapidly as feasible the goals of full employment and production, increased real income, balanced growth, fiscal policies that would establish the share of an expanding gross national product accounted for by Federal outlays at the lowest level consistent with national needs and priorities, a balanced Federal budget, adequate productivity growth, price stability, achievement of an improved trade balance, and proper attention to national priorities; and
>
> (B) annual numerical goals as specified in subparagraph (A) for the three successive calendar years, designated as medium term goals;
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> . . . .

15 U.S.C. § 1022(a)(2) (1988).

[187] *See supra* note 140.

[188] Section 201(b) of Gramm-Rudman-Hollings added what is now section 301(g)(2) as section 301(g). *See infra* p. 345. Section 208(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added sections 301(g)(1) and 301(g)(3) and changed the title of the subsection from "COMMON ECONOMIC ASSUMPTIONS" to "ECONOMIC ASSUMPTIONS." Pub. L. No. 100-119, § 208(a), 101 Stat. 754, 786 (Sept. 29, 1987) (codified at 2 U.S.C. § 632(g) (1988)).

[189] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. infra* note 273 (regarding section 303(a)).

[190] Section 304(b) applies section 301(g) to revisions of budget resolutions. *See infra* p. 93.

thereto,[191] or any conference report thereon, that sets forth amounts and levels that are determined on the basis of more than one set of economic and technical assumptions.

(2) The joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall set forth the common economic assumptions upon which such joint statement and conference report are based, or upon which any amendment contained in the joint explanatory statement to be proposed by the conferees in the case of technical disagreement,[192] is based.

(3) Subject to periodic reestimation based on changed economic conditions or technical estimates, determinations under titles III[193] and IV[194] of the Congressional Budget Act of 1974 shall be based upon such common economic and technical assumptions.

(h) BUDGET COMMITTEE CONSULTATION WITH COMMITTEES.--The Committee on the Budget of the House of Representatives shall consult with the committees of its House having legislative jurisdiction during the preparation, consideration, and enforcement of the concurrent resolution on the budget with respect to all matters which relate to the jurisdiction or functions of such committees

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[191] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 275 (regarding section 303(a)).

[192] Section 208(a) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added the comma here. Pub. L. No. 100-119, § 208(a), 101 Stat. 754, 786 (Sept. 29, 1987) (codified at 2 U.S.C. § 632(g) (1988)).

[193] *See* pp. 41-158.

[194] *See infra* pp. 199-223.

(i)[195] It shall not be in order in the Senate to consider any concurrent resolution on the budget as reported[196] to the Senate that would decrease the excess of social security revenues[197] over social security outlays[198] in any of the fiscal years covered by the concurrent resolution. No change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

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[195] Section 13303(b) of the Budget Enforcement Act amended subsection (i) to read as it does now. *See infra* p. 669. The Congressional Budget Act now addresses in section 606(c) (*see infra* p. 275) the matter that the old section 301(i) used to address. For the text of section 301(i) as it used to read, see *infra* note 851 (at the end of section 606(c)).

Sections 904(c) of the Congressional Budget Act (*see infra* pp. 298-299) and 271(b) of Gramm-Rudman-Hollings (*see infra* p. 591) provide that the Senate may waive or suspend section 301(i) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 608.

[196] *Cf. infra* note 488 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

Note, as well, that section 301(i) does not by its terms apply to amendments from the floor to budget resolutions.

[197] Section 301(a)(7) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." *See supra* note 134.

[198] Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 132.

COMMITTEE ALLOCATIONS

SEC. 302. (a)[199] ALLOCATION OF TOTALS. --

(1) For the House of Representatives, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of total budget outlays,[200] total new budget authority,[201] total entitlement authority,[202] and total credit authority[203] among each committee of the House of Representatives which has jurisdiction over laws, bill and resolutions providing such new budget authority, such entitlement authority, or such credit authority.[204] The allocation shall, for each committee, divide new budget authority, entitlement authority, and credit authority[205] between amounts provided or required by law on the date of such conference report (mandatory or uncontrollable

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[199] Section 302 is codified as amended at 2 U.S.C. § 633.

[200] Section 3(1) defines "budget outlays." *See supra* p. 11.

[201] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[202] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204).

[203] Section 3(10) defines "credit authority." *See supra* p. 19.

Effective for fiscal year 1992 and after, section 13201(b)(3)(A)(i) of the Budget Enforcement Act will strike this reference to "total credit authority" (*see infra* p. 630), as title V will then address credit (*see infra* pp. 225-250), and the provision of what is now credit authority will become the provision of either budget authority or entitlement authority.

[204] Effective for fiscal year 1992 and after, section 13201(b)(3)(A)(ii) of the Budget Enforcement Act will strike this reference to "such credit authority." *See infra* p. 630.

[205] Effective for fiscal year 1992 and after, section 13201(b)(3)(A)(iii) of the Budget Enforcement Act will strike this reference to "credit authority." *See infra* p. 630.

amounts), and amounts not so provided or required (discretionary or controllable amounts), and shall make the same division for estimated outlays that would result from such new budget authority.

(2) For the Senate, the joint explanatory statement accompanying a conference report on a concurrent resolution on the budget shall include an estimated allocation, based upon such concurrent resolution as recommended in such conference report, of the appropriate levels of social security outlays[206] for the fiscal year of the resolution and for each of the 4 succeeding fiscal years,[207] total budget outlays,[208] total new budget authority[209] and new credit authority[210] among each committee of[211] the Senate which has jurisdiction over bills and resolutions providing such new budget authority.

(b) REPORTS BY COMMITTEES. -- As soon as practicable after a concurrent resolution on the budget is agreed to --

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[206] Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 134.

[207] Section 13303(c)(1) of the Budget Enforcement Act added the words "social security outlays for the fiscal year of the resolution and for each of the 4 succeeding fiscal years." *See infra* p. 670.

[208] Section 3(1) defines "budget outlays." *See supra* p. 11.

[209] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[210] Section 402(b) defines "*new* credit authority" (*see infra* p. 212), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

Effective for fiscal year 1992 and after, section 13201(b)(3)(B) of the Budget Enforcement Act will strike this reference to "new credit authority" (*see infra* p. 630), as title V will then address credit (*see infra* pp. 225-250), and the provision of what is now credit authority will become the provision of either budget authority or entitlement authority.

[211] Because this paragraph deals with procedures for the Senate, section 13112(a)(6) of the Budget Enforcement Act deleted the words "the House of Representatives and" that used to appear here. *See infra* p. 624.

(1) the Committee on Appropriations of each House shall, after consulting with the Committee on Appropriations of the other House,

(A) subdivide among its subcommittees the allocation of budget outlays,[212] new budget authority,[213] and new credit authority[214] allocated to it in the joint explanatory statement accompanying the conference report on such concurrent resolution, and

(B) further subdivide the amount with respect to each such subcommittee between controllable amounts and all other amounts; and

(2) every other committee of the House and Senate to which an allocation was made in such joint explanatory statement shall, after consulting with the committee or committees of the other House to which all or part of its allocation was made,

(A) subdivide such allocation among its subcommittees or among programs over which it has jurisdiction, and

(B) further subdivide the amount with respect to each subcommittee or program between controllable amounts and all other amounts.

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[212] Section 3(1) defines "budget outlays." *See supra* p. 11.

[213] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[214] Section 402(b) defines "*new* credit authority" (*see infra* p. 212), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

Effective for fiscal year 1992 and after, section 13201(b)(3)(C) of the Budget Enforcement Act will strike this reference to "new credit authority" (*see infra* p. 630), as title V will then address credit (*see infra* pp. 225-250), and the provision of what is now credit authority will become the provision of either budget authority or entitlement authority.

Each such committee shall promptly report[215] to its House the subdivisions made by it pursuant to this subsection.

(c) POINT OF ORDER.[216] -- It shall not be in order[217] in the House of Representatives or the Senate to consider any bill,[218] joint resolution, amendment,[219] motion, or conference report,[220] providing --

(1) new budget authority[221] for a fiscal year;

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[215] Because this section here requires committees to "report," committees must comply with the provisions of rule XXVI(7)(a), which requires (among other things) that "no measure or matter or recommendation shall be *reported* from any committee unless a majority of the committee were physically present," (STANDING RULES OF THE SENATE Rule XXVI(7)(a)(1) (1990) (emphasis added)) and: "The vote of any committee to *report* a measure or matter shall require the concurrence of a majority of the members of the committee who are present." *Id.* Rule XXVI(7)(a)(3) (emphasis added).

[216] Sections 904(c) of the Congressional Budget Act (*see infra* pp. 298-299) and 271(b) of Gramm-Rudman-Hollings (*see infra* p. 591) provide that the Senate may waive or suspend section 302(c) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. (Section 211 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added section 302(c) to the list of points of order with this requirement. Pub. L. No. 101-119, § 211, 101 Stat. 754, 787 (1987) (codified at 2 U.S.C. § 901 note).) Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 608.

[217] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. infra* note 273 (regarding section 303(a)).

The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 494 (regarding section 311(a)).

[218] Because section 302(c) does not contain the words "as reported" here, points of order under section 302(c) will apply to bills and resolutions as amended by amendments against which points of order would lie under section 302(c). *Cf. infra* note 488 (regarding the meaning of "as reported" in section 311(a)).

[219] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 275 (regarding section 303(a)).

[220] Section 13207(a)(1)(A) of the Budget Enforcement Act struck the words "bill or resolution, or amendment thereto" at this point and inserted "bill, joint resolution, amendment, motion, or conference report." *See infra* p. 639.

[221] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

(2) new spending authority as described in section 401(c)(2)[222] for a fiscal year;[223] or

(3) new credit authority[224] for a fiscal year;

within the jurisdiction of any committee which has received an appropriate allocation of such authority pursuant to subsection (a)[225] for such fiscal year, unless and until such committee makes the allocation or subdivisions required by subsection (b),[226] in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year.

(d) SUBSEQUENT CONCURRENT RESOLUTIONS. -- In the case of a concurrent resolution on the budget referred to in section 304,[227] the allocations under subsection (a)[228] and the subdivi-

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[222] *See infra* pp. 203-206.

[223] *See, e.g.*, 132 CONG. REC. S10,693-94 (1986); Senate Precedent PRL19860807-003 (Aug. 7, 1986) (LEGIS, Rules database) (bill providing spending authority within the jurisdiction of the Committee on Armed Services subject to section 302(c)); 132 CONG. REC. S10,145-46 (1986); Senate Precedent PRL19860801-003 (Aug. 1, 1986) (LEGIS, Rules database) (amendment providing entitlement authority within the jurisdiction of the Committee on Agriculture, Nutrition, and Forestry subject to section 302(c)); 132 CONG. REC. S10,017 (1986); Senate Precedent PRL19860731-002 (July 31, 1986) (LEGIS, Rules database) (same).

[224] Section 402(b) defines "*new* credit authority" (*see infra* p. 212), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

Effective for fiscal year 1992 and after, section 13201(b)(3)(D) of the Budget Enforcement Act will strike this reference to "new credit authority for a fiscal year" (*see infra* p. 630), as title V will then address credit (*see infra* pp. 225-250), and the provision of what is now credit authority will become the provision of either budget authority or entitlement authority.

[225] *See supra* pp. 70-71.

[226] *See supra* pp. 71-73.

[227] *See infra* pp. 93-94.

[228] *See supra* pp. 70-71.

sion under subsection (b)[229] shall be required only to the extent necessary to take into account revisions made in the most recently agreed to concurrent resolution on the budget.

(e) ALTERATION OF ALLOCATIONS. -- At any time after a committee reports the allocations required to be made under subsection (b),[230] such committee may report to its House an alteration of such allocations. Any alteration of such allocations must be consistent with any actions already taken by its House on legislation within the committee's jurisdiction.

(f) LEGISLATION SUBJECT TO POINT OF ORDER.[231] --

(1) IN THE HOUSE OF REPRESENTATIVES. -- After the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in the House of Representatives to consider any bill, joint[232] resolution, or amendment providing new budget authority[233] for such fiscal year, new entitlement authority[234]

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[229] *See supra* pp. 71-73.

[230] *See supra* pp. 71-73.

[231] Sections 904(c) of the Congressional Budget Act (*see infra* pp. 298-299) and 271(b) of Gramm-Rudman-Hollings (*see infra* p. 591) provide that the Senate may waive or suspend section 302(f) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See also* 132 CONG. REC. S14,202 (1986); Senate Precedent PRL19860929-002 (Sept. 29, 1986) (LEGIS, Rules database). Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 608.

Note also the provisions for the suspension of section 302(f) under certain circumstances after the declaration of war or a recession pursuant to section 258 of Gramm-Rudman-Hollings. *See infra* pp. 543-556.

[232] So that one could not read this language to apply to simple House resolutions setting forth rules, section 13207(a)(1)(B) of the Budget Enforcement Act added the word "joint." *See infra* p. 639.

[233] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[234] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204).

effective during such fiscal year, or new credit authority[235] for such fiscal year, or any conference report on any such bill or joint[236] resolution, if --

(A) the enactment of such bill or resolution as reported;

(B) the adoption and enactment of such amendment; or

(C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the appropriate allocation made pursuant to subsection (b)[237] for such fiscal year of new discretionary budget authority, new entitlement authority, or new credit authority[238] to be exceeded.

(2) IN THE SENATE. -- At any time after the Congress has completed action on the concurrent resolution on the budget required to be

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[235] Section 402(b) defines "*new* credit authority" (*see infra* p. 212), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

Effective for fiscal year 1992 and after, section 13201(b)(3)(E)(i) of the Budget Enforcement Act will strike this reference to "new credit authority for such fiscal year" (*see infra* p. 630), as title V will then address credit (*see infra* pp. 225-250), and the provision of what is now credit authority will become the provision of either budget authority or entitlement authority.

[236] So that one could not read this language to apply to simple House resolutions setting forth rules, section 13207(a)(1)(B) of the Budget Enforcement Act added the word "joint." *See infra* p. 639.

[237] *See supra* pp. 71-73.

[238] Effective for fiscal year 1992 and after, section 13201(b)(3)(E)(ii) of the Budget Enforcement Act will strike this reference to "new credit authority" (*see infra* p. 631), as title V will then address credit (*see infra* pp. 225-250), and the provision of what is now credit authority will become the provision of either budget authority or entitlement authority.

reported under section 301(a)[239] for a fiscal year, it shall not be in order[240] in the Senate to consider any bill,[241] joint resolution, amendment,[242] motion, or conference report,[243] that provides[244] for budget outlays,[245] new budget authority,[246] or new spending authority (as defined in section 401(c)(2))[247] or new credit authority[248] in excess of

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[239] *See supra* pp. 46-51.

[240] *See, e.g.*, 132 CONG. REC. S14,716 (1986); Senate Precedent PRL19861002-003 (Oct. 2, 1986) (amendment causing allocation to Agriculture Subcommittee to be exceeded ruled out of order); 132 CONG. REC. S14,410 (1986); Senate Precedent PRL19861001-002 (Oct. 1, 1986) (amendment causing allocation to be exceeded ruled out of order).

Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. infra* note 273 (regarding section 303(a)).

[241] Because section 302(f) does not contain the words "as reported" here, points of order under section 302(f) will apply to bills and resolutions as amended by amendments against which points of order would lie under section 302(f). *Cf. infra* note 488 (regarding the meaning of "as reported" in section 311(a)).

[242] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. infra* note 275 (regarding section 303).

[243] Section 13207(a)(1)(B) of the Budget Enforcement Act struck the words "bill or resolution (including a conference report thereon), or any amendment to a bill or resolution" here and inserted "bill, joint resolution, amendment, motion, or conference report." *See infra* p. 639.

[244] Senate Budget Committee staff have advised (for example, in August 1990) that legislation will "provide[] for budget outlays or new budget authority in excess of the appropriate allocation" if it will, when added other legislation passed by the Senate, cause the appropriate allocation to be exceeded. Senate Budget Committee staff will not add into that calculation other legislation merely reported by a committee that the Senate has not passed.

[245] Section 3(1) defines "budget outlays." *See supra* p. 11.

A point of order lies under section 302(f) against an amendment that would increase outlays above the appropriate allocation by increasing an obligation ceiling. 132 CONG. REC. S13,521-23 (1986); Senate Precedent PRL19860924-001 (Sept. 24, 1986) (LEGIS, Rules database).

[246] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[247] Section 13207(a)(2) of the Budget Enforcement Act added the reference to "new spending authority (as defined in section 401(c)(2))." *See infra* p. 640.

(A)[249] the appropriate allocation[250] of such outlays or authority reported under subsection (a),[251] or

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[248](...continued)

[248] Section 402(b) defines "*new* credit authority" (*see infra* p. 212), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

Section 13201(b)(2) of the Budget Enforcement Act (*see infra* p. 629) added this reference to new credit authority for fiscal year 1991 only, as a stopgap for the period before the fiscal year 1992 effective date for the credit reform provisions of title V. *See infra* pp. 225-250. The words "or new credit authority" will drop from this paragraph after fiscal year 1991. *See infra* p. 629. Thereafter, the provision of what is now credit authority will become the provision of either budget authority or entitlement authority.

[249] Section 13112(a)(7)(A) of the Budget Enforcement Act added the letter "(A)" here. *See infra* p. 625. Note that section 13303(c)(3) of the Budget Enforcement Act (*see infra* p. 670) added another subsection (A) below. *See infra* 80.

[250] The appropriate allocation setting the ceiling may be an allocation of no dollars. *See* 132 CONG. REC. S13,521-23 (1986); Senate Precedent PRL19860924-001 (Sept. 24, 1986) (LEGIS, Rules database).

The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 494 (regarding section 311(a)).

[251] *See supra* pp. 70-71.

Note that a later sentence of this paragraph (*see infra* p. 80) exempts appropriations from the point of order under this subparagraph.

Before enactment of the Budget Enforcement Act, the point of order under this paragraph lay only against exceeding a committee's allocation to a subcommittee or program, not against exceeding the budget resolution's allocation to a committee. Section 13112(a)(7) of the Budget Enforcement Act extended the point of order to legislation that would exceed either. *See infra* p. 625.

Before enactment of the Budget Enforcement Act, if a committee had not yet filed its allocation under section 302(b), no point of order could lie under section 302(f), because no basis would exist on which to determine whether the Committee had exceeded its allocation. In such a case, the point of order would lie under section 302(c). 132 CONG. REC. S10,693 (1986); Senate Precedent PRL19860807-003 (Aug. 7, 1986) (LEGIS, Rules database). This precedent may have continuing application only for appropriations, which a later sentence of this paragraph (*see infra* p. 80) exempts from the point of order against exceeding the budget resolution's allocation to a committee.

(B)[252] the appropriate allocation (if any) of such outlays or authority reported[253] under subsection (b)[254] in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year

or provides for social security outlays[255] in excess of the appropriate allocation of social security outlays under subsection (a)[256] for the fiscal year of the resolution or for the total of that year and the 4 succeeding fiscal years.[257]

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[252] Section 13112(a)(7)(B) of the Budget Enforcement Act added the letter (B) and some of subparagraph (B) here. *See infra* p. 625. Note that section 13303(c)(3) of the Budget Enforcement Act (*see infra* p. 670) added another subsection (B) below. *See infra* 81.

[253] Section 13112(a)(7)(B) of the Budget Enforcement Act added the words "under subsection (a), or (B) the appropriate allocation (if any) of such outlays or authority reported" here. *See infra* p. 625.

[254] *See supra* pp. 71-73.

[255] Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 134.

[256] *See supra* pp. 70-71.

Note that the last sentence of this paragraph (*see infra* p. 80) exempts appropriations from the point of order under this subparagraph.

Before enactment of the Budget Enforcement Act, the point of order under this paragraph lay only against exceeding a committee's allocation to a subcommittee or program, not against exceeding the budget resolution's allocation to a committee. Section 13112(a)(7) of the Budget Enforcement Act extended the point of order to legislation that would exceed either. *See infra* p. 625.

Before enactment of the Budget Enforcement Act, if a committee had not yet filed its allocation under section 302(b), no point of order could lie under section 302(f), because no basis would exist on which to determine whether the Committee had exceeded its allocation. In such a case, the point of order would lie under section 302(c). 132 CONG. REC. S10,693 (1986); Senate Precedent PRL19860807-003 (Aug. 7, 1986) (LEGIS, Rules database). This precedent may have continuing application only for appropriations, which the last sentence of this paragraph (*see infra* p. 80) exempts from the point of order against exceeding the budget resolution's allocation to a committee.

[257] Section 13303(c)(2) of the Budget Enforcement Act added the words "or provides for social security outlays in excess of the appropriate allocation of social security outlays

(continued...)

Subparagraph (A)[258] shall not apply to any bill, resolution, amendment, motion, or conference report that is within the jurisdiction of the Committee on Appropriations.[259] In applying this paragraph[260] --

> **(A)[261] estimated social security outlays[262] shall be deemed to be reduced by the excess of estimated social security revenues[263] (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) over the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget;**

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[257](...continued)
under subsection (a) for the fiscal year of the resolution or for the total of that year and the 4 succeeding fiscal years." *See infra* p. 670.

[258] There are two subparagraphs (A) in this paragraph, above and below. This reference relates to the subparagraph (A) above. *See supra* p. 78. Section 13112(a)(7) of the Budget Enforcement Act added both this sentence and the letter (A) above. *See infra* p. 625.

[259] Section 13112(a)(7)(C) of the Budget Enforcement Act added this sentence. *See infra* p. 625.

[260] Section 13303(c)(3) of the Budget Enforcement Act added the balance of this paragraph. *See infra* p. 670.

[261] Section 13303(c)(3) of the Budget Enforcement Act added this subparagraph (A). *See infra* p. 670. Note that section 13112(a)(7)(A) of the Budget Enforcement Act (*see infra* p. 625) added another subparagraph (A) above. *See supra* p. 78.

[262] Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 134.

[263] Section 301(a)(7) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." *See supra* note 134.

(B)[264] estimated social security outlays shall be deemed increased by the shortfall of estimated social security revenues (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) below the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget; and

(C) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

The Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under subsection (a)[265] and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to subsection (b).[266]

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[264] Section 13303(c)(3) of the Budget Enforcement Act added this subparagraph (B). *See infra* p. 670. Note that section 13112(a)(7)(B) of the Budget Enforcement Act (*see infra* p. 625) added another subparagraph (B) above. *See supra* p. 78.

[265] *See supra* pp. 70-71.

[266] *See supra* pp. 71-73.

(g) Determinations by Budget Committees. -- For purposes of this section, the levels of new budget authority,[267] spending authority as described in section 401(c)(2),[268] outlays[269] and new credit authority[270] for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget[271] of the House of Representatives or the Senate, as the case may be.

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[267] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[268] *See infra* pp. 203-206.

[269] Section 3(1) defines "outlays." *See supra* p. 11.

[270] Section 402(b) defines "*new* credit authority" (*see infra* p. 212), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

[271] This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 201(g), *supra* p. 32; section 310(d)(4), *infra* p. 142; section 311(c), *infra* p. 157; section 313(e), *infra* p. 182; and section 258B(h)(4) of Gramm-Rudman-Hollings, *infra* p. 571.

CONCURRENT RESOLUTION ON THE BUDGET MUST BE ADOPTED BEFORE LEGISLATION PROVIDING NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, NEW CREDIT AUTHORITY, OR CHANGES IN REVENUES OR THE PUBLIC DEBT LIMIT IS CONSIDERED

SEC. 303.[272] (a) IN GENERAL. -- It shall not be in order[273] in either the House of Representatives or the Senate to consider any bill,[274] joint resolution, amendment,[275] motion, or conference report[276] as

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[272] Section 303 is codified as amended at 2 U.S.C. § 634.

[273] Although section 303 sets forth a prohibition, that prohibition is not self-enforcing, and requires a point of order from the floor for its enforcement. 130 CONG. REC. S7,919 (1984); Senate Precedent PRL19840621-001 (June 21, 1984) (LEGIS, Rules database).

The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 494 (regarding section 311(a)).

[274] If a bill violates section 303, the point of order will lie notwithstanding that a complete substitute that would not violate section 303 is pending. 132 CONG. REC. S318-19 (1986); Senate Precedent PRL19860127-001 (Jan. 27, 1986) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; bill that would reduce revenues).

[275] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *See* 132 CONG. REC. S7,973-74, S8,169, S8,207-09 (June 19, 23 & 24, 1986); Senate Precedent PRL19860624-001 (June 24, 1986) (LEGIS, Rules database) (point of order by Sen. Packwood on amendment by Sen. Melcher that would reduce revenues in violation of section 303(a)).

[276] Section 13207(a)(1)(C) of the Budget Enforcement Act struck "bill or resolution (or amendment thereto)" here and inserted "bill, joint resolution, amendment, motion, or conference report." *See infra* p. 639. Before enactment of the Budget Enforcement Act, by virtue of its application to "amendments," section 303 also applied to conference reports by precedent where amendments made in conference contain new matter not previously considered by the Senate. 124 CONG. REC. S9,383-403 (1978); Senate Precedent PRL19780410-001 (Apr. 10, 1978) (LEGIS, Rules database); *see also* 131 CONG. REC. S6,367-68 (1985); Senate Precedent PRL19850516-001 (May 16, 1985) (LEGIS, Rules data-

(continued...)

reported[277] to the House or Senate which provides --

(1) new budget authority[278] for a fiscal year;

(2) an increase or decrease in revenues[279] to become effective during a fiscal year;

(3) an increase or decrease in the public debt limit[280] to become effective during a fiscal year;

(4) new entitlement authority[281] to become effective

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[276](...continued) base) (the Chair responded that a particular conference report would violate section 303(a)); 132 CONG. REC. S16,419-20, S16,611-13 (1986); Senate Precedent PRL19861016-002 (Oct. 16, 1986) (LEGIS, Rules database) (precedent headnote states that a point of order would lie against a conference report; point of order waived).

[277] *Cf. infra* note 488 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

[278] *See, e.g.*, 133 CONG. REC. S5,381-83 (1987) (point of order by Sen. Chiles on amendment by Sen. Boschwitz).

Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[279] *See, e.g.*, 132 CONG. REC. S8,207-09 (1986); Senate Precedent PRL19860624-001 (June 24, 1986) (LEGIS, Rules database) (point of order by Sen. Packwood on amendment by Sen. Melcher that would reduce revenues); 132 CONG. REC. S318-19 (1986); Senate Precedent PRL19860127-001 (Jan. 27, 1986) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; bill that would reduce revenues); 131 CONG. REC. S8,806-07 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (inquiry of Sen. Chafee; amendment that would reduce revenues); 131 CONG. REC. S6,367-68 (1985); Senate Precedent PRL19850516-001 (May 16, 1985) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum; conference report that would raises revenues).

[280] The public debt limit is set at 31 U.S.C. § 3101.

[281] Section 303(a) prohibits legislation that would create entitlement authority that would become effective before Congress has agreed to a budget resolution for the appropriate fiscal year, and such legislation would not fall within an exception un section 303(b). 129 CONG. REC. S9,826, S9,845, S9,852 (1983); Senate Precedent PRL19830713-004 (July 13, 1983) (LEGIS, Rules database). In other words, an entitlement that begins in a year beyond the budget resolution violates section 303(a). 130 CONG. REC. S7,070-71, S7,102-12, S7,175, S7,181 (1984); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database); *see also* 132 CONG. REC. S16,419-20, S16,611-13 (1986); Senate Precedent (continued...)

during a fiscal year;

(5)[282] in the Senate only, new spending authority (as defined in section 401(c)(2)[283]) for a fiscal year; or

(6)[284] in the Senate only, outlays,[285]

until the concurrent resolution on the budget for such fiscal year (or, in the Senate, a concurrent resolution on the budget covering such fiscal year)[286] has been agreed to[287] pursuant to

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[281](...continued) PRL19861016-002 (Oct. 16, 1986) (LEGIS, Rules database) (precedent headnote states that a point of order would lie against a conference report if that conference report contained entitlements to become effective in years beyond the resolution; point of order waived).

Entitlements begin in the year payments are made, not when benefits vest. 130 CONG. REC. S7,107 (1984); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database) (inquiry of Sen. Armstrong).

Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204). For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 609.

[282] Section 13205(a)(3) of the Budget Enforcement Act amended this paragraph to read as it does now. *See infra* p. 636. Section 13205(a)(1) of the Budget Enforcement Act repealed what used to be paragraph (5). *See infra* p. 636. Before enactment of the Budget Enforcement Act, paragraph (5) read as follows: "(5) new credit authority for a fiscal year." Effective for fiscal year 1992 and after, title V will address credit (*see infra* pp. 225-250), and the provision of what is now credit authority will become the provision of either budget authority or entitlement authority.

[283] *See infra* pp. 203-206.

[284] Section 13205(a)(3) of the Budget Enforcement Act added this paragraph. *See infra* p. 636.

[285] Section 3(1) defines "outlays." *See supra* p. 11.

[286] Section 13205(a)(4) of the Budget Enforcement Act added the parenthetical "(or, in the Senate, a concurrent resolution on the budget covering such fiscal year)." *See infra* p. 636. Thus for Senate committees other than the Appropriations Committee (for which subsection (b)(2) provides an explicit exception), no point of order will lie if the spending provided begins in any one of the five years covered by the most recent budget resolution.

[287] On a number of occasions, the House and the Senate have passed simple resolutions providing that the Congress shall be deemed to have agreed to a budget resolution for the fiscal year. As a consequence of these resolutions, points of order would (continued...)

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[287] (...continued)
not lie under section 303, but would lie under sections 302 and 311.

On July 16, 1985, the House passed H. Res. 221, which waived points of order under section 303(a) against consideration of any appropriations bill. That resolution stated (in relevant part):

> Sec. 2. All points of order for failure to comply with the provisions of section 303(a) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived against the consideration of any general appropriation bill making appropriations for fiscal year 1986 reported by the Committee on Appropriations before July 12, 1985.

H. Res. 221, 99th Cong., 1st Sess., 131 CONG. REC. H5,666-75 (July 16, 1985).

Eight days later, the House passed H. Res. 231, which deemed the Congress to have adopted the House-passed budget resolution for purposes of applying points of order in the House. H. Res. 231 stated:

> H. RES. 231
>
> *Resolved*, That, for the purposes of the provisions of the Congressional Budget Act of 1974 (Public Law 93-344), as they apply to the House of Representatives, the Congress shall be considered to have adopted H. Con. Res. 152, revising the congressional budget for the United States Government for the fiscal year 1985 and setting forth the congressional budget for the United States Government for the fiscal years 1986, 1987, and 1988, as adopted by the House on May 23, 1985. For the purposes of this resolution, the allocations of budget authority and new entitlement authority printed in the Congressional Record of July 23, 1985 by Representative Gray of Pennsylvania, shall be considered as allocations made pursuant to section 302(a) of the Congressional Budget Act of 1974 (Public Law 93-344).
>
> SEC. 2. This resolution shall cease to apply upon final adoption by the House and the Senate of a concurrent resolution on the budget for the applicable fiscal year or years.

H. Res. 231, 99th Cong., 1st Sess., 131 CONG. REC. H6,171 (July 24, 1985).

On June 17, 1987, the House Rules Committee reported to the House H. Res. 197, a similar resolution. H. Res. 197, 100th, 1st Sess., 134 CONG. REC. H5,212, D837 (June 17, 1987). The next day, however, the Rules Committee reported a rule (H. Res. 201) for the consideration of the conference report on the budget resolution for that year (H. Con. Res. 93) that also provided for laying H. Res. 197 on the table. *See* 134 CONG. REC. D847-48 (June 18, 1987). The House passed that rule on June 23. *See* 134 CONG. REC. H5,398-407 (June 24, 1987).

On June 19, 1990, the House passed another resolution, H. Res. 413, to deem the House-passed budget resolution to govern the House. H. Res. 413 stated (in relevant part):

(continued...)

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[287](...continued)

Sec. 3. (a) For purposes of sections 302 and 311 of the Congressional Budget Act of 1974, as amended (Public Law 93-344, as amended by Public Law 99-177) as they apply to the Committee on Appropriations and consideration of general appropriation bills, amendments thereto or conference reports thereon, in the House of Representatives, the Congress shall be considered to have adopted H. Con. Res. 310, setting forth the congressional budget for the United States Government for the fiscal years 1991, 1992, 1993, 1994, and 1995, as adopted by the House on May 1, 1990. For purposes of this resolution, the allocations of spending and credit responsibility to the Committee on Appropriations printed in the star print of H. Rept. 101-455 shall be considered as allocations made pursuant to section 302(a) of the Congressional Budget Act of 1974, as amended.

(b) This section shall cease to apply upon final adoption by the House and the Senate of a concurrent resolution on the budget for fiscal year 1991.

H. Res. 413, 101st Cong., 2d Sess., 136 CONG. REC. H3,733 (June 19, 1990).

The Senate followed suit on July 12, 1990, as the Senate Budget Committee reported and the Senate passed by unanimous consent S. Res. 308, a simple resolution to give the Appropriations Committee its allocations. S. Res. 308 stated:

RESOLUTION

To provide budget allocations for fiscal year 1991 to the Senate Committee on Appropriations under section 302(a) of the Congressional Budget Act of 1974.

Resolved, That (a) for purposes of section 302(a) of the Congressional Budget Act of 1974 the estimated allocation of the appropriate levels of budget totals for the Senate Committee on Appropriations shall be --

(1) $690,606,000,000 in total budget outlays; and

(2) $680,512,000,000 in total new budget authority,

until a concurrent resolution on the budget for fiscal year 1991 is agreed to by the Senate and House of Representatives pursuant to section 301 of Congressional Budget Act of 1974.

(b) Notwithstanding the provisions of subsection (a) and if the Bipartisan Executive-Congressional Economic Summit reaches an agreement on appropriate levels of budget totals different from those contained in subsection (a) and the Congress adopts such levels, the levels agreed to by the Bipartisan Executive-Congressional Economic Summit shall supersede the levels contained in subsection (a).

S. Res. 308, 101st Cong., 2d Sess., 136 CONG. REC. S9,642-43 (July 12, 1990).

(continued...)

section 301.[288]

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[287](...continued)

In related legislation, the Spending Reduction Act of 1984, a reconciliation bill created in response to instructions in a budget resolution adopted during the previous calendar year, stated the sense of the House that in the absence of agreement on a budget resolution, the House would abide by the House-passed budget resolution (H. Con. Res. 280). Similar provisions stated the sense of the Senate regarding defense and non-defense ceilings for appropriations activity, but the Senate did not give these ceilings the status of an allocation to the Appropriations Committee under section 302(a). The Spending Reduction Act provides (in relevant part):

> TITLE I -- GENERAL PROVISIONS
>
> SENSE OF SENATE STATEMENT
>
> SEC. 2101. It is the sense of the Senate that ceilings on fiscal year 1985 appropriation bills shall not exceed, in the aggregate, $139.8 billion for non-defense, discretionary accounts, and shall not exceed $299 billion for defense accounts. Further, it is the sense of the Senate that the allocations of these sums, normally done through the section 302(b) process under the Congressional Budget and Impoundment Control Act of 1974, in the absence of a first concurrent budget resolution for fiscal year 1985 will be done by the Senate Appropriations Committee to guide its subcommittees in their separate deliberations on individual appropriation bills for fiscal year 1985.
>
> SENSE OF HOUSE STATEMENT
>
> SEC. 2102. (a) It is the Sense of the House that in fiscal year 1985, 1986, and 1987, Federal deficits can be reduced by $182 billion as a result of the first concurrent resolution on the budget for fiscal year 1985 and the Deficit Reduction Act of 1984. Further, it is the sense of the House that these deficit reductions shall be divided among revenue increases, domestic spending reductions, and limits on the growth in military spending.
>
> (b) It is the sense of the House that in the absence of agreement on a first concurrent resolution on the budget for fiscal year 1985 that the House will continue to abide by House Concurrent Resolution 280, as passed the House.
>
> (c) It is the sense of the House that the Congress shall immediately adopt a conference report on the first concurrent resolution on the budget for fiscal year 1985 and that the Congress shall enforce the aggregate levels of revenue and spending provided in such resolution.

Pub. L. No. 98-369, § § 2101-2102, 98 Stat. 494, 1057-58 (July 18, 1984).

[288] *See supra* pp. 46-69.

(b) Exceptions. -- (1) In the House of Representatives,[289] subsection (a)[290] does not apply to any bill or resolution --

(A)[291] providing new budget authority[292] which first becomes available in a fiscal year following the fiscal year to which the concurrent resolution applies; or

(B)[293] increasing or decreasing revenues which first become effective in a fiscal year following the fiscal year to which the concurrent resolution applies.[294]

After May 15 of any calendar year, subsection (a)[295] does not apply in the House of Representatives to any general appro-

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[289] Section 13205(b)(1) of the Budget Enforcement Act added the words "(1) In the House of Representatives." *See infra* p. 636. Thus, these exceptions no longer apply in the Senate.

[290] *See supra* pp. 83-88.

[291] Section 13205(b)(1) of the Budget Enforcement Act changed this number from "(1)" to "(A)" to conform to the addition of the words "(1) In the House of Representatives," above. *See infra* p. 636.

[292] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[293] Section 13205(b)(1) of the Budget Enforcement Act changed this number from "(2)" to "(B)" to conform to the addition of the words "(1) In the House of Representatives," above. *See infra* p. 636.

[294] Before the enactment of the Budget Enforcement Act, under a precedent of October 5, 1978, sometimes called "the Long precedent," section 303(a) applied in the Senate -- with respect to revenues at least -- only during the period from January 1 through the adoption of the budget resolution. *See* 124 CONG. REC. S17,238-44 (Oct. 5, 1978). The precedent arose from the Senate's vote to overturn a correct ruling of the Chair. Because section 13205(b)(1) of the Budget Enforcement Act added the words "(1) In the House of Representatives," (*see infra* p. 636) at the beginning of this paragraph, the exception provided by this subparagraph no longer applies in the Senate, and the Long precedent should have no continuing validity. For another precedent under this section as it used to apply in the Senate, see, e.g., 131 CONG. REC. S8,806-07 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (inquiry of Sen. Chafee; amendment that would reduce revenues in the year for which the budget resolution in conference would provide).

[295] *See supra* pp. 83-88.

priation bill,[296] or amendment thereto, which provides new budget authority[297] for the fiscal year beginning in such calendar year.

(2)[298] In the Senate, subsection (a)[299] does not apply to any bill or resolution making advance appropriations for the fiscal year to which the concurrent resolution applies and the two succeeding fiscal years.

(c) WAIVER IN THE SENATE.[300] --

(1) The committee of the Senate which reports any bill or resolution (or amendment thereto) to which subsection (a)[301] applies may at or after the time it reports such bill or resolution (or amendment), report a resolution[302] to the Senate

(A) providing for the waiver of subsection (a)[303]

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[296] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

[297] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[298] Section 13205(b)(2) of the Budget Enforcement Act added this paragraph. *See infra* p. 636.

[299] *See supra* pp. 83-88.

[300] Note that the Senate may waive section 303(a) pursuant to section 904(b), *see infra* pp. 296-298, and that either the Senate or the House may pass a simple resolution that would waive section 303(a). *See supra* note 287.

Compare the parallel provisions for waiver in the Senate in section 402(c) as originally enacted in 1974 but repealed in 1985. *See infra* note 653.

[301] *See supra* pp. 83-88.

[302] *See, e.g.*, S. Res. 242, 100th Cong., 1st Sess., 133 CONG. REC. S15,247 (Oct. 28, 1987) (regarding S. 1184, the Airport and Airway Capacity Expansion Act; approved 92-5); S. Res. 83, 100th Cong., 1st Sess., 133 CONG. REC. S1,671 (Feb. 4, 1987) (regarding S. 382, Urban Mass Transportation Authorization Act; approved 84-16); S. Res. 85, 100th Cong., 1st Sess., 133 CONG. REC. S1,452 (Feb. 2, 1987) (regarding S. 387, Federal Aid-Highway Act; approved 91-1).

[303] *See supra* pp. 83-88.

with respect to such bill or resolution (or amendment), and

(B) stating the reasons why the waiver is necessary.

The resolution shall then be referred to the Committee on the Budget of the Senate. That committee shall report the resolution to the Senate within 10 days after the resolution is referred to it (not counting any day on which the Senate is not in session) beginning with the day following the day on which it is so referred, accompanied by that committee's recommendations and reasons for such recommendations with respect to the resolution. If the committee does not report the resolution within such 10-day period, it shall automatically be discharged from further consideration of the resolution and the resolution shall be placed on the calendar.

(2) During the consideration of any such resolution, debate shall be limited[304] to one hour, to be equally divided between, and controlled by, the majority leader and minority leader or their designees, and the time on any debatable motion or appeal shall be limited[305] to twenty minutes, to be equally divided between, and controlled by, the mover and the manager of the resolution. In the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage of such resolution, allot additional

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[304] Contrast the case under a motion to waive pursuant to section 904(b), where Senators may debate without a time limit. *See infra* note 897.

[305] Contrast the cases for appeals generally under section 904(d) (*see infra* pp. 302-303), and for appeals during consideration of budget resolutions and reconciliation legislation under section 305(b)(2) (*see infra* pp. 99-108), where Senators may debate for one hour.

time to any Senator during the consideration of any debatable motion or appeal. No amendment to the resolution is in order.[306]

(3) If, after the Committee on the Budget has reported (or been discharged from further consideration of) the resolution, the Senate agrees to the resolution, then subsection (a)[307] shall not apply with respect to the bill or resolution (or amendment thereto) to which the resolution so agreed to applies.

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[306] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

Cf. 131 CONG. REC. S4,503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

[307] *See supra* pp. 83-88.

PERMISSIBLE REVISIONS OF CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 304.[308] (a) IN GENERAL. -- At any time[309] after the concurrent resolution on the budget for a fiscal year has been agreed to pursuant to section 301,[310] and before the end of such fiscal year, the two Houses may adopt a concurrent resolution on the budget which revises or reaffirms the concurrent resolution on the budget for such fiscal year most recently agreed to.

(b)[311] ECONOMIC ASSUMPTIONS. -- The provisions of section

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[308] Section 304 is codified as amended at 2 U.S.C. § 635.

[309] In some years, Congress has revised the budget for the current fiscal year as part of the budget resolution for the upcoming fiscal year. For example, the budget resolution for fiscal year 1986 also revised the budget totals for fiscal year 1985.

[310] *See supra* pp. 46-69.

[311] Section 13112(a)(8) of the Budget Enforcement Act repealed what used to be subsection (b) and redesignated what used to be subsection (c) as subsection (b). *See infra* p. 625. Section 208(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added what was then subsection (c) and is now subsection (b). Pub. L. No. 100-119, § 208(b), 101 Stat. 754, 786 (Sept. 29, 1987).

Before enactment of the Budget Enforcement Act, subsection (b) read as follows:

> (b) MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED. -- The provisions of section 301(i) shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(i) (and amendments thereto and conference reports thereon).

Section 13303(b) of the Budget Enforcement Act (*see infra* 669) repealed what used to be section 301(i). Section 13111 of the Budget Enforcement Act (*see infra* p. 623) added a new section 606(c) of the Congressional Budget Act (*see infra* p. 275) that fulfills much the same function as did the old section 301(i). (Compare the text of what used to be section 301(i) (*see infra* note 851) with that of the new section 606(c). *See infra* p. 275.) Note, however, that section 606(c) does not apply to revisions of budget resolutions under section 304, even though the parallel language for the House of Representatives in section 606(b) (*see infra* p. 274) explicitly mentions revisions of budget resolutions under section

(continued...)

301(g)[312] shall apply with respect to concurrent resolutions on the budget under this section (and amendments thereto[313] and conference reports thereon) in the same way they apply to concurrent resolutions on the budget under such section 301(g)[314] (and amendments thereto and conference reports thereon).[315]

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[311] (...continued)
304. Consequently, while violating the maximum deficit amount in this context used to require a supermajority, it no longer does.

Section 13208(a)(1) of the Budget Enforcement Act amended section 904(c) of the Congressional Budget Act to consolidate in one place the list of points of order requiring 60 votes to waive. *See infra* p. 643. Congress intended the new section 904(c) to supersede section 271(b) of Gramm-Rudman-Hollings (*see infra* p. 591), but section 13208 of the Budget Enforcement Act (*see infra* pp. 643-644) mistakenly failed to repeal section 271(b) of Gramm-Rudman-Hollings. While the new section 904(c) does not list section 304(b), section 271(b) continues to list section 304(b) among the points of order that it requires 60 Senators to waive. *See infra* p. 591. Thus, if the statute is to be taken at its face value, it requires 60 Senators to waive a point of order raised on the grounds that a revision of a budget resolution uses two sets of economic assumptions, even though such a sin may be waived by a majority if the Senate commits it on the first budget resolution that the Senate considers for a fiscal year.

[312] *See supra* pp. 67-68.

[313] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303(a)).

[314] *See supra* pp. 67-68.

[315] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

PROVISIONS RELATING TO THE CONSIDERATION OF CONCURRENT RESOLUTIONS ON THE BUDGET

SEC. 305.[316] (a) PROCEDURE IN HOUSE OF REPRESENTATIVES AFTER REPORT OF COMMITTEE; DEBATE. --

(1) When the Committee on the Budget of the House of Representatives has reported any concurrent resolution on the budget, it is in order at any time after the fifth day (excluding Saturdays, Sundays, and legal holidays) following the day on which the report upon such resolution by the Committee on the Budget has been available to Members of the House and, if applicable, after the first day (excluding Saturdays, Sundays, and legal holidays) following the day on which a report upon such resolution by the Committee on Rules pursuant to section 301(c)[317] has been available to Members of the House (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the concurrent resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(2) General debate on any concurrent resolution on the budget in the House of Representatives shall be limited to not more than 10 hours, which shall be divided equally between the majority and minority parties, plus such additional hours of debate as are consumed pursuant to paragraph (3). A motion further to limit debate is not debatable. A motion to recommit the concurrent resolution is not in order, and it is not in order to move to reconsider

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[316] Section 305 is codified as amended at 2 U.S.C. § 636.

[317] *See supra* p. 57.

the vote by which the concurrent resolution is agreed to or disagreed to.

(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the House, there shall be a period of up to four hours for debate on economic goals and priorities.

(4) Only if a concurrent resolution on the budget reported by the Committee on the budget of the House sets forth the economic goals (as described in sections 3(a)(2)[318] and 4(b)[319] of the Full Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)[320]) set forth in such resolution are designed to achieve, shall it be in order to offer to such resolution an amendment relating to such goals, and such amendment shall be in order only if it also proposes to alter such estimates, amounts, and levels in germane fashion in order to be consistent with the goals proposed in such amendment.

(5) Consideration of any concurrent resolution on the budget by the House of Representatives shall be in the Committee of the Whole, and the resolution shall be considered for amendment under the five-minute rule in accordance with the applicable provisions of rule XXIII of the Rules of the House of Representatives. After the Committee rises and reports the resolution back to the House, the previous question shall be considered as ordered on the resolution and any amendments thereto to final passage without intervening motion; except that it shall be in order at any time prior to final passage (not-

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[318] *See supra* note 186.

[319] *See supra* note 140.

[320] *See supra* pp. 46-51.

withstanding any other rule or provision of law) to adopt an amendment (or a series of amendments) changing any figure or figures in the resolution as so reported to the extent necessary to achieve mathematical consistency.

(6) Debate in the House of Representatives on the conference report on any concurrent resolution on the budget shall be limited to not more than 5 hours, which shall be divided equally between the majority and minority parties. A motion further to limit debate is not debatable. A motion to recommit the conference report is not in order, and it is not in order to move to reconsider the vote by which the conference report is agreed to or disagreed to.

(7) Appeals from decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any concurrent resolution on the budget shall be decided without debate.

(b) PROCEDURE IN SENATE AFTER REPORT OF COMMITTEE; DEBATE; AMENDMENTS. --

(1) Debate in the Senate on any concurrent resolution on the budget, and all amendments thereto[321] and

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[321] The Committee on the Budget may modify the budget resolution on the floor. *See* 126 CONG. REC. S4,516 (May 5, 1980) (statement of Chairman Hollings). The Committee on the Budget may authorize a Senator to modify a Committee amendment to a budget resolution. 127 CONG. REC. S2,697 (Mar. 26, 1981) (statement of Majority Leader Baker).

A committee need not have a formal meeting to authorize the offering of a committee amendment on its behalf; rather, a majority of the committee may so authorize by polling. 128 CONG. REC. S9,014-15 (1982); Senate Precedent PRL19820722-005 (July 22, 1982) (LEGIS, Rules database) (inquiry by Sen. DeConcini regarding Dole amendment on behalf of the Finance Committee on the Tax Reconciliation Act of 1982).

At the end of the time for debate on a bill or resolution, Senators may call up amendments for the Senate to vote on without debate. *Cf.* 128 CONG. REC. S15,711 (1982); Senate Precedent PRL19821220-004 (Dec. 20, 1982) (LEGIS, Rules database) (inquiries of Sen. Byrd; where a unanimous consent agreement provides for a vote at a time certain, when that time arrives amendments may be offered and voted on without debate). (The Chair uses precedents under unanimous consent agreements to interpret provisions of the Congressional Budget Act that use the language used in unanimous consent agreements.
(continued...)

debatable motions and appeals in connection therewith,[322] shall be limited to not more than 50 hours,[323] except that with respect to any concurrent resolution referred to in section 304(a)[324] all such debate shall be limited to not more than 15 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

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[321](...continued)
See 127 CONG. REC. S3,148 (1981); Senate Precedent PRL19810401-001 (Apr. 1, 1981) (LEGIS, Rules database) (for the debate in this precedent, see *infra* note 330).)

[322] Section 209 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Clarification of Congressional Intent Regarding Time Limits for Conference Reports on Concurrent Resolutions on the Budget," added the words "and all amendments thereto and debatable motions and appeals in connection therewith." Pub. L. No. 100-119, § 209, 101 Stat. 754, 787 (Sept. 29, 1987). The joint statement of mangers accompanying the conference report on that bill explained:

> 5. Time Limit for Conference Reports on Budget Resolutions
>
> *Current Law*
>
> Section 305(c)(2) of the 1974 Budget Act establishes time limits for debate on the conference reports on budget resolutions and reconciliation legislation. However, it is not clear from the language whether the time limit applies to appeals, debatable motions, and amendments in disagreement.
>
> *Senate Amendment*
>
> The Senate amendment (Section 232) amends Section 305(c)(2) to specifically include in the time limit "all amendments in disagreement, and all amendments thereto, and debatable motions and appeals in connection therewith."
>
> *Conference Agreement*
>
> The House recedes and concurs in the Senate amendment. The conferees intend that all debate on the conference report should fall within the established time limits.

H.R. CONF. REP. No. 100-313, 100th Cong., 1st Sess. 64-65 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 739, 764-65.

[323] In contrast, section 310(e)(2) limits debate on a reconciliation bill to 20 hours. *See infra* p. 143.

[324] *See supra* p. 93.

(2)[325] Debate in the Senate on any amendment to a concurrent resolution on the budget shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, and debate on any amendment to an amendment, debatable motion,[326] or appeal[327] shall be limited

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[325] Section 904(c) provides that the Senate may waive or suspend section 305(b)(2) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 298; *see also* 132 CONG. REC. S12,986; Senate Precedent PRL19860919-003 (Sept. 19, 1986) (LEGIS, Rules database) (vote of three-fifths of the Senators duly chosen and sworn is required to waive the germaneness requirement contained in section 305(b)(2)).

[326] When a Senator makes a motion to waive under section 904(b) during the consideration of a reconciliation bill, debate is limited to one hour, as specified by section 305(b) and applied to reconciliation by section 310(e). 131 CONG. REC. S14,011 (1985); Senate Precedent PRL19851024-002 (Oct. 24, 1985) (LEGIS, Rules database).

The motion is subject to a motion to table when that time has expired or been yielded back. *Id.*

Any motion in the Senate must be submitted in writing upon the request of any Senator. *Id.*

A Senator must control time or have time yielded to him to make a parliamentary inquiry when the Senate is considering a matter under controlled debate time. *Id.*

Compare the similar provisions for control and division of time on motions to recommit in paragraph (5), which do not provide for time for the minority leader. *See infra* p. 109.

Despite the legislative language of this paragraph and paragraph (5), the Chair once responded to an inquiry that time for debate on a motion to recommit during consideration of a reconciliation bill was controlled by and evenly divided between the mover of the recommittal motion and the majority leader. 128 CONG. REC. S8,705 (1982); Senate Precedent PRL19820720-003 (July 20, 1982) (LEGIS, Rules database) (inquiry by Majority Leader Baker during debate on the Reconciliation Tax Act of 1982). As section 310(e)(1) applies the provisions of section 305(b)(2), and, more particularly, section 305(b)(5), to reconciliation bills, section 305(b)(5) indicates that the Chair should have responded that time was to be equally divided between, and controlled by, the mover and the manager of the reconciliation bill.

[327] Compare the similar provisions for control and division of time on appeals in section 904(d), which do not provide for time for the minority leader. *See infra* p. 302.

Despite the legislative language of this paragraph and section 904(d), the Chair once

(continued...)

to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution, except that in the event the manager of the concurrent resolution is in favor of any such amendment, motion, or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. No amendment[328] that is not germane[329] to the provisions of such concurrent

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[327](...continued)
responded to an inquiry that time for debate on an appeal from the ruling of the Chair during consideration of a reconciliation bill was controlled by and evenly divided between the Senator who made the appeal and the majority leader. 128 CONG. REC. S8,702-03, S8,705 (1982); Senate Precedent PRL19820720-003 (July 20, 1982) (LEGIS, Rules database) (inquiry by the manager, Senator Packwood, during debate on the Reconciliation Tax Act of 1982). As section 310(e)(1) applies the provisions of section 305(b)(2) to reconciliation bills, section 305(b)(2) indicates that the Chair should have responded that time was to be equally divided between, and controlled by, the Senator who made the appeal and the manager of the reconciliation bill, except that in the event that the manager favored the appeal, the minority leader or the minority leader's designee would control the time in opposition.

[328] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303(a)).

[329] In summary, an amendment is germane *only* if it:

- strikes a provision,
- changes a number or date,
- restricts the authority or scope of the resolution or bill without adding any new subject matter, or
- states purely precatory language (such as findings, a sense of the Senate, or a sense of the Congress) within the jurisdiction of the Budget Committee (or in application to reconciliation, some reporting committee).

The Chair uses precedents regarding germaneness under unanimous consent agreements to interpret this provision of the Congressional Budget Act, which uses the language used in unanimous consent agreements in the usual form. 127 CONG. REC. S3,148 (1981); Senate Precedent PRL19810401-001 (Apr. 1, 1981) (LEGIS, Rules database) (for the debate in this precedent, see *infra* note 330).

The Chair clarified the precedents on germaneness on April 22, 1982. *See* 128 CONG. REC. S3,879-82 (1982). The first headnote of the Parliamentarian's record of that precedent summarizes:

(continued...)

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[329](...continued)

The germaneness test is much more severe in the Senate than a simple subject matter test. It is basically a technical amendment test, and adding language to a bill which expands the powers available under that bill has been ruled nongermane. Amendments which restrict powers granted by a bill have been ruled germane. In addition, amendments which propose to strike language in a bill regardless of their effect upon the powers granted in a bill are per se germane.

Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database).

The precedent arose in the Senate debate of the motion to proceed to S. 1680, the Criminal Code Reform Act of 1981. Senators McClure and Helms propounded a series of parliamentary inquiries of the Presiding Officer (Senator Cochran). *Id.*

In a series of inquiries and responses, Senator McClure and the Chair made clear than an amendment may permissibly restrict the meaning of a section, but could not broaden its effect:

> Mr. McCLURE. Mr. President, I have the following parliamentary inquiry: Is the amendment . . . nongermane because it introduces a new word which changes the meaning of the amended section, in that it replaces, "interferes with, hinders, delays, or prevents," with "causes interference with, or hindrance, delay, or prevention of?"
>
> The PRESIDING OFFICER. Changing the meaning of the section is permissible if the change does not broaden the effect of the section.
>
> Mr. McCLURE. It would not be germane because it adds new language, if that new language does not change the meaning -- excuse me -- if it does not add new material in spite of the fact that it may change the meaning.
>
> The PRESIDING OFFICER. It is permissible within the germaneness standard to change the meaning so long as you do not broaden the meaning.
>
> Mr. McCLURE. Mr. President, I understand the words: I am not sure I understand the implication. I can change it but not broaden it. That is one of my concerns.
>
> The PRESIDING OFFICER. The meaning could be restricted by the change.
>
> Mr. McCLURE. It could be restricted but not broadened?
>
> The PRESIDING OFFICER. The Senator is correct.
>
> Mr. McCLURE. And the addition of the word "causes" in that particular place -- does that restrict or does that expand?

(continued...)

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[329](...continued)

The PRESIDING OFFICER. The original meaning included both a conduct and a result test. The new meaning only includes a result test.

Mr. McCLURE. Therefore, it is a restriction? Do I understand the Chair correctly?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. The second inquiry: Is the amendment on page 20 . . . nongermane because it introduces new subject matter not pertaining to criminal law in that it adds a new section bringing the bill into conformity with the Budget Act?

The PRESIDING OFFICER. That amendment restricts the power which would be otherwise available; therefore, it would be germane.

Mr. McCLURE. Is the amendment on page 3, line 2, nongermane because it adds new crimes to the list of exemptions from the inchoate offenses?

The PRESIDING OFFICER. If the amendment added a new crime to a list of crimes for which penalties could be assessed, it would be nongermane. This amendment adds a restriction on the bill; therefore, it is germane.

Mr. McCLURE. That is true because, Mr. President, it adds to a list of exemptions; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. McCLURE. Is the amendment on page 12, line 4, nongermane because it adds a new section dealing with safety offenses to the bill?

The PRESIDING OFFICER. This indeed does add a new crime, and therefore would be considered nongermane.

Mr. McCLURE. Is the amendment on 21, line 1, nongermane because it references in a new section?

The PRESIDING OFFICER. This amendment expands the effect of the bill and therefore is nongermane.

. . . .

Mr. McCLURE. Amendment No. 1287 . . . would prohibit funds from the victims compensation program being used to perform abortions. Would that amendment be nongermane?

The PRESIDING OFFICER. This amendment appears to be a restrictive amendment, and therefore it would be germane.

(continued...)

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[329](...continued)

128 CONG. REC. S3,879 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database). For additional authority for the proposition that an amendment that on its face restricts the effect of the bill or amendment is germane, see 128 CONG. REC. S15,711 (1982); Senate Precedent PRL19821219-002 (Dec. 19, 1982) (LEGIS, Rules database) (inquiry of Sen. Harry F. Byrd, Jr.); 128 CONG. REC. S11,844 (1982) (inquiry of Sen. Robert C. Byrd regarding Weicker amendment).

In another set of inquiries on April 22, 1982, Senator McClure and the Chair made clear that an amendment that would strike language is *always* germane:

> Mr. McCLURE. . . .
>
> Amendment No. 1285 would strike section 402. Since it would be an amendment to strike, it would not be subject to the germaneness test; is that correct?
>
> The PRESIDING OFFICER. No amendment to strike, regardless of its effect, can be ruled nongermane.
>
> . . . .
>
> Mr. McCLURE. Amendment No. 1288 would restore current law with respect to the jurisdiction of the Bureau of Alcohol, Tobacco, and Firearms and would affect the bill by removing several broad jurisdictional expansions, but it would add to the bill current law while restricting the bill with respect to the broadening of jurisdiction. Would that be nongermane?
>
> The PRESIDING OFFICER. Amendment 1288, since it is fashioned as an amendment to strike, is per se germane.
>
> . . . .
>
> Mr. McCLURE. Amendment No. 1290 would repeal the order of notice provisions which would allow businessmen to be ordered to notify customers to sue them. Would the amendment be in order?
>
> The PRESIDING OFFICER. Since the amendment is an amendment to strike, it would be per se germane.

128 CONG. REC. S3,879-80 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database).

A third set of inquiries indicates that an amendment that changes a figure is germane:

> Mr. McCLURE. Amendment No. 1289 would restore current law with respect to the general level of criminal fines and would remove the structure that has been created in the proposed legislation. Would that amendment be nongermane?

(continued...)

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[329](...continued)

> The PRESIDING OFFICER. The amendment appears to be an attempt to strike a figure and substitute in lieu thereof another figure and therefore would be germane.

Id.

In one inquiry, Senator McClure and the Chair made clear that an amendment that would substitute new language that is not restrictive of the bill would not be germane even if it dealt with the same subject matter:

> Mr. McCLURE. . . . Amendment 1295 would restore current law with respect to first degree murder. Would that amendment be germane?
>
> The PRESIDING OFFICER. This is another amendment that is in fact two amendments. The first is an amendment to strike, and would be germane. The second expands the effect of the bill, and would not be germane.
>
> Mr. McCLURE. I might pursue that one step further, in that the subject matter to be added with respect to line 4 of the amendment, being the numeral 1111, is language that deals with the same subject matter but in a manner different from that contained in the bill, in the first half of the amendment, which would be stricken.
>
> The PRESIDING OFFICER. The germaneness test has never been interpreted as a subject matter test. It is basically a technical amendment test, and even expanding the bill dealing with the same subject matter has been ruled nongermane.
>
> Mr. McCLURE. I will not debate the issue with respect to this particular amendment. I simply wish to point out that that which is in 1111 is the same subject matter -- does not expand the bill. It is a substitution for the bill language with respect to the law relating to first degree murder. If we get to that point, I might wish to discuss that a little further, because I am not certain in this instance that if you look past the number to what is contained in page 522, line 2, it would be discerned that 1111 is the same subject matter and not a broadening of the subject matter of the bill.
>
> I might renew that parliamentary inquiry when, as, and if we get to the point when that becomes pertinent.
>
> The PRESIDING OFFICER. The Senator has not propounded an additional inquiry?
>
> Mr. McCLURE. No; I have not.

Id. at S3,880.

Similarly, another precedent indicates that an amendment that adds nonrestrictive

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[329](...continued)
language is not germane, even if the amendment is relevant to the bill. 131 CONG. REC. S17,507 (1985); Senate Precedent PRL19851212-001 (Dec. 12, 1985) (LEGIS, Rules database). In the precedent of December 12, 1985, the pending bill, S. 1396, provided for the settlement of claims relating to trust allotments of land granted to certain Native Americans and for judicial review of compensation findings by the Secretary of the Interior relating to those claims. A unanimous consent agreement required that amendments be germane and relevant. On a point of order by Senator Durenberger, the Chair ruled not germane a Melcher amendment that required the United States to provide legal assistance to allottees or heirs regarding the merits of their claims under the bill. *Id.*

A ruling of December 3, 1985, provides another precedent for the proposition that an amendment that adds nonrestrictive language to a bill is not germane. 131 CONG. REC. S16,735 (1985); Senate Precedent PRL19851203-010 (Dec. 3, 1985) (LEGIS, Rules database). The pending bill then (S. 1884, the farm credit system bill) governed by a unanimous consent agreement that required that amendments be germane, provided for three members of a board to be elected by farm credit banks and two members to be appointed by the Chairman of another board. *Id.* Senator Boren's amendment proposed to reduce from three to two those members to be elected by farm credit banks, and provided that one member be appointed by the Secretary of Agriculture. *Id.* The Chair ruled as follows:

> The PRESIDING OFFICER (Mr. Gorton of Washington). germaneness of the amendment is required by the unanimous consent agreement. The amendment of the Senator from Oklahoma does add new language which does not restrict powers contained in the bill and it is, therefore, not germane. The point of order is sustained.

Id.

An amendment that would have limited a proposed increase in a tax contained in a bill, but also proposed to increase another tax not contained in the bill was not germane. 128 CONG. REC. S8,884, S8,887-88 (1982); Senate Precedent PRL19820722-001 (July 22, 1982) (LEGIS, Rules database) (point of order by Sen. Dole to Thurmond amendment to the Tax Reconciliation Act of 1982).

Once the Senate has stricken language, that language can no longer form the basis for germaneness. 128 CONG. REC. S3,880 (1982); Senate Precedent PRL19820422-001 (Apr. 22, 1982) (LEGIS, Rules database). Senator McClure and the Chair set this precedent on the same April 22, 1982, set of inquiries noted above:

> Mr. McCLURE. . . .
>
> Amendment No. 1296: The amendment would strike section 1325. Is that amendment germane?
>
> The PRESIDING OFFICER. This amendment is two amendments. The first is an amendment to strike, and would be germane. The second appears to expand the effect of the bill, and therefore would not be germane.
>
> Mr. McCLURE. If, as a matter of fact, the language contained in

(continued...)

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[329](...continued)

"1503, 1505," referred to in line 4 of the amendment, is more restrictive than the language being stricken in the first half of the amendment, would it then survive the germaneness test?

> The PRESIDING OFFICER. Once language has been stricken, it no longer sets the parameters for germaneness.
>
> Mr. McCLURE. Even though it is in the same amendment?
>
> The PRESIDING OFFICER. The Chair has observed that this is not one amendment but two amendments.

Id.

The Chair will consider germane per se amendments reported by or offered by authority of the committee of jurisdiction, and such amendments may form part of the basis for determining germaneness. 128 CONG. REC. S9,014-15 (1982); Senate Precedent PRL19820722-005 (July 22, 1982) (LEGIS, Rules database) (inquiry by Sen. DeConcini regarding Dole amendment on behalf of the Finance Committee on the Tax Reconciliation Act of 1982). The Chair will consider germane an amendment that is germane to an amendment reported by a committee, even if the committee amendment itself contains significant matter within the jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5. 128 CONG. REC. S8,702-04 (1982); Senate Precedent PRL19820720-002 (July 20, 1982) (LEGIS, Rules database) (debate on reconciliation bill). It follows, then, that the Chair will consider per se germane an amendment reported by a committee even if the committee amendment contains significant matter within the jurisdiction of another committee in violation of the jurisdictional rule of rule XV, paragraph 5. *See id.*

A Senator may offer again on behalf of the committee that had reported the measure an amendment that the Chair had ruled out of order as nongermane when offered by the Senator in the Senator's individual capacity. *See* 128 CONG. REC. S9,014-15 (1982); Senate Precedent PRL19820722-005 (July 22, 1982) (LEGIS, Rules database) (Dole amendment to the Tax Reconciliation Act of 1982).

The Chair will consider germane an amendment that is germane to an amendment for which the Senate has waived the germaneness requirement of the Congressional Budget Act. 132 CONG. REC. S12,986 (1986); Senate Precedent PRL19860919-004 (Sept. 19, 1986) (LEGIS, Rules database); 131 CONG. REC. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database).

A motion under section 904(b) to waive the germaneness requirement of the Congressional Budget Act without specifying the object of that motion, even though made in response to a point of order against an amendment, would waive that requirement without restriction. 131 CONG. REC. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database).

Setting the time or sequence for a vote on an amendment does not implicitly waive the germaneness requirement. *See* 129 CONG. REC. S1,807 (1983); Senate Precedent PRL19830301-001 (Mar. 1, 1983) (LEGIS, Rules database) (inquiries of Sens.

(continued...)

resolution shall be received.[330] Such leaders, or either of

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[329](...continued)
Metzenbaum, Byrd, and Baker regarding cloture).

The germaneness requirement does not apply to a motion to recommit a reconciliation bill with instructions to report back forthwith a specific amendment that would bring a committee into compliance with the reconciliation instructions in the budget resolution. Senate Precedent PRL19810617-001 (June 17, 1981) (LEGIS, Rules database); *see also infra* note 422.

For more on the subject of germaneness of amendments, see F. RIDDICK, SENATE PROCEDURE 50-52, 234-38, 1085-92 (1981).

In contrast to the germaneness test, the test for relevance is a looser, subject matter test. *See infra* note 1596.

Also in contrast to the germaneness test, the test for extraneousness (in the context of reconciliation) depends on another set of criteria regarding, among other things, whether the provision in question reduces the deficit. *See* section 313 (sometimes called the "Byrd Rule") *infra* pp. 160-198.

[330] The language that such amendments "shall not be received" merely permits a Senator to raise a point of order after time on the amendment has expired, and does not authorize the Chair to rule on the amendment at the Chair's initiative. 127 CONG. REC. S3,148 (1981); Senate Precedent PRL19810401-001 (Apr. 1, 1981) (LEGIS, Rules database). On April 1, 1981, the following debate took place before time on the amendment had expired:

> Mr. LONG. . . . .
>
> . . . . Mr. President, I make the point of order that this amendment is not germane to the bill.
>
> Mr. METZENBAUM. Mr. President, I believe the Senator's point of order is premature.
>
> The PRESIDING OFFICER. The Chair would inform the Senator from Louisiana that a point of order is not in order at this time.
>
> Mr. LONG. Mr. President, the reorganization law says that an amendment that is not germane will not be received.
>
> Mr. METZENBAUM. But it also says it is not in order until time for debate on the amendment has expired.
>
> The PRESIDING OFFICER. The Senator from Louisiana has the floor.
>
> The point of order would be in order after the time for debate on the amendment has expired.

(continued...)

them, may, from the time under their control on the passage of the concurrent resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) Following the presentation of opening statements on the concurrent resolution on the budget for a fiscal year by the chairman and ranking minority member of the Committee on the Budget of the Senate, there shall be a period of up to four hours for debate on economic goals and policies.

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[330](...continued)

> Mr. LONG. Mr. President, might I just discuss it? We have before us an amendment which, under the law, is an amendment that is not to be received. Therefore, I make the point of order that this amendment is out of order. It should not have been received and there is nothing to debate.
>
> The PRESIDING OFFICER. The Chair is of the opinion that the point of order may or may not be correct. It looks as if it might be correct. But the language "shall not be received" is standard language used by the Senate in unanimous-consent agreements which impose germaneness on amendments. Under the precedents of the Senate, it has been held uniformly that, under those circumstances, a point of order against an amendment on the ground that it is not germane may not be made until the time of the amendment has expired.

Id.

Cf. supra note 273 (Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement; regarding section 303(a)).

Contrast the rule under cloture, where the Chair will take the initiative to rule out of order nongermane amendments without waiting for a point of order from the floor. *See, e.g.*, 130 CONG. REC. S11,111-12 (1984); Senate Precedent PRL19840913-001 (Sept. 13, 1984) (LEGIS, Rules database); 128 CONG. REC. S11,844 (1982); Senate Precedent PRL19820920-002 (Sept. 20, 1982) (LEGIS, Rules database) (inquiry of Sen. Robert C. Byrd).

For further examples of the application of the point of order under section 305(b), see, *e.g.*, 133 CONG. REC. S17,652-53 (Dec. 10, 1987) (Harkin motion to waive rejected 47-49 regarding his amendment no. 1257 to S. 1920, the Omnibus Budget Reconciliation Act of 1987); 133 CONG. REC. S17,600 (Dec. 10, 1987) (Majority Leader Byrd's motion to waive section 305(b) and other sections approved 81-13 regarding specified amendments and motion to recommit regarding S. 1920, the Omnibus Budget Reconciliation Act of 1987).

(4) Subject to the other limitations of this Act, only if a concurrent resolution on the budget reported by the Committee on the Budget of the Senate sets forth the economic goals (as described in sections 3(a)(2)[331] and 4(b)[332] of the Employment Act of 1946) which the estimates, amounts, and levels (as described in section 301(a)[333]) set forth in such resolution are designed to achieve, shall it be in order[334] to offer to such resolution an amendment relating to such goals,[335] and such amendment shall be in order[336] only if it also proposes to alter such estimates, amounts, and levels in germane[337] fashion in order to be consistent with the goals proposed in such amendment.

(5) A motion to further limit debate is not debatable. A motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the

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[331] *See supra* note 186.

[332] *See supra* note 140.

[333] *See supra* pp. 46-51.

[334] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

[335] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303(a)).

[336] *Id.*

[337] For a discussion of germaneness, see *supra* note 329.

manager of the concurrent resolution.[338]

(6) Notwithstanding any other rule,[339] an amendment or series of amendments to a concurrent resolution on the budget proposed in the Senate shall always be in order if such amendment or series of amendments proposes to change any figure or figures then contained in such concurrent resolution so as to make such concurrent resolution mathematically consistent or so as to maintain such consistency.[340]

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[338] Compare the similar provisions for control and division of time on motions generally in paragraph (2), which provide for time for the minority leader under certain circumstances. *See supra* p. 99.

Despite the legislative language of this paragraph and paragraph (2), the Chair once responded to an inquiry that time for debate on a motion to recommit during consideration of a reconciliation bill was controlled by and evenly divided between the mover of the recommittal motion and the majority leader. 128 CONG. REC. S8,705 (1982); Senate Precedent PRL19820720-003 (July 20, 1982) (LEGIS, Rules database) (inquiry by Majority Leader Baker during debate on the Reconciliation Tax Act of 1982). As section 310(e)(1) applies the provisions of section 305(b)(5) (not to mention the parallel, less specific provisions of section 305(b)(2)) to reconciliation bills, section 305(b)(5) indicates that the Chair should have responded that time was to be equally divided between, and controlled by, the mover and the manager of the reconciliation bill.

[339] The rule of section 305(b)(6) runs contrary to the general rule in the Senate that it is not in order to amend solely material that the Senate has already amended. For discussions of the general rule, see F. RIDDICK, SENATE PROCEDURE 25-27 (1981) (and precedents cited there); M. Gold, Senate Procedure and Practice: An Introductory Manual 33-34, 46-47 (Dec. 1983).

[340] *See also* 128 CONG. REC. S5,759 (1982); Senate Precedent PRL19820520-006 (May 20, 1982) (LEGIS, Rules database) (inquiry of Majority Leader Baker regarding amendment by Sen. Sasser to the First Concurrent Resolution on the Budget for fiscal year 1983).

The Parliamentarian's notes accompanying the precedent of May 20, 1982, explains that office's position:

> Section 305(b)(6) . . . protects amendments which would otherwise not be in order, namely those amending figures already amended or those amending the pending question at more than one place, if said amendments make or maintain mathematical consistency. Advice from this office has been given to the effect that to qualify for this exception, any increase or decrease in a budget function requires a commensurate increase or decrease in any one or combination of the following to make the amendment in order: Revenue totals, and the amounts by which revenues should be changed, budget authority

(continued...)

(c) ACTION ON CONFERENCE REPORTS IN THE SENATE. --

(1)[341] A motion to proceed to the consideration of the conference report on any concurrent resolution on the budget (or a reconciliation bill or resolution)[342] may be made even though a previous motion to the same effect has been disagreed to.

(2) During the consideration in the Senate of the

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[340](...continued)

totals, outlay totals, public debt totals, and the amounts by which the statutory limit on the public debt should be changed, the deficit for the fiscal year involved and interest on the public debt, and other budget functions. Reconciliation numbers need not be changed.

Senate Precedent PRL19820520-006 (May 20, 1982) (LEGIS, Rules database).

Note that section 305(d) creates a point of order against consideration of a budget resolution whose figures are not mathematically consistent. *See infra* pp. 113-114.

[341] Section 13209(1)(A) of the Budget Enforcement Act repealed what used to be the first sentence of this paragraph. *See infra* p. 645. Before enactment of the Budget Enforcement Act, that sentence read as follows:

> The conference report on any concurrent resolution on the budget shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such conference report is reported and is available to Members of the Senate.

This superseded provision created something of an anomaly, as conference reports normally enjoy privileged status in the Senate, and they do not have to lie over under the Standing Rules of the Senate. *See* F. RIDDICK, SENATE PROCEDURE 395-98 (1981) (and precedents cited there). The law before enactment of the Budget Enforcement Act made budget resolutions and reconciliation bills a notable exception to that general principle, even though the Senate usually has just as much reason to consider conference reports on budget resolutions and reconciliation bills under an expedited schedule as other conference reports.

[342] Section 13209(1)(B) of the Budget Enforcement Act added the words "on any concurrent resolution on the budget (or a reconciliation bill or resolution)" here (*see infra* p. 645), as section 13209(1)(B) of the Budget Enforcement Act repealed the reference in what used to be the first sentence of this paragraph. *See infra* p. 645.

conference report (or a message between Houses)[343] on any concurrent resolution on the budget,[344] and all amendments in disagreement, and all amendments thereto, and debatable motions and appeals in connection therewith,[345] debate shall be limited to 10 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report (or a message between Houses)[346] shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manger of the conference report (or a message between Houses).[347]

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[343] Section 13209(2) of the Budget Enforcement Act added this parenthetical. *See infra* p. 645. This addition makes explicit the interpretation prior to enactment of the Budget Enforcement Act. Before enactment of the Budget Enforcement Act, paragraph (2) appeared to cover the case most analogous to that of amendment between the Houses, and thus provided the procedures for that case. The statement of managers accompanying the conference report on the Budget Enforcement Act explains the addition briefly: "The conference agreement makes clear that amendments between the Houses on budget resolutions are covered in the Senate under section 305(c), which also deals with conference reports on budget resolutions." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,170 (1990).

[344] When conferees have before them a complete substitute, they may add any matter to their report that is not "entirely irrelevant" to the subject matter contained in either the bill or the substitute. 128 CONG. REC. S10,898-901 (1982); Senate Precedent PRL19820819-002 (Aug. 19, 1982) (LEGIS, Rules database) (point of order by Sen. East on the Tax Reconciliation Act of 1982; Chair sustained 68-27 on appeal).

[345] Section 209 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Clarification of Congressional Intent Regarding Time Limits for Conference Reports on Concurrent Resolutions on the Budget," added the language "and all amendments in disagreement, and all amendments thereto, and debatable motions and appeals in connection therewith" at this point to make clear that the 10-hour limit constitutes an overall cap on all debate. *See* Pub. L. No. 100-119, § 209, 101 Stat. 754, 787 (Sept. 29, 1987). Section 8003(d) of the Omnibus Budget Reconciliation Act of 1987 inserted the comma after "therewith" that section 209 had inadvertently omitted. Pub. L. No. 100-203, § 8003(d), 101 Stat. 1330, 1330-282 (Dec. 22, 1987).

[346] Section 13209(2) of the Budget Enforcement Act added this parenthetical. *See infra* p. 645. For a brief discussion of the addition, see *supra* note 343.

[347] Section 13209(2) of the Budget Enforcement Act added this parenthetical. *See infra* p. 645. For a brief discussion of the addition, see *supra* note 343.

(3) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to 1 hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to one-half hour, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between and controlled by the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall be under the control of the minority leader or his designee.

(4) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment[348] that is not germane[349] to the provisions of such amendments shall be in received.[350]

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[348] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303).

[349] For a discussion of germaneness, see *supra* note 329.

[350] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

(d)[351] CONCURRENT RESOLUTION MUST BE CONSISTENT IN THE SENATE. -- It shall not be in order[352] in the Senate to vote on the question of agreeing to --

(1) a concurrent resolution on the budget unless the figures then contained in such resolution are mathematically consistent;[353] or

(2) a conference report on a concurrent report on a concurrent resolution on the budget unless the figures contained in such resolution, as recommended in such conference report, are mathematically consistent.

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[351] Section 13210(1) of the Budget Enforcement Act repealed what used to be subsection (d) and redesignated what used to be subsection (e) as subsection (d). *See infra* p. 646. Before enactment of the Budget Enforcement Act, subsection (d) read as follows:

> (d) REQUIRED ACTION BY CONFERENCE COMMITTEE. -- If at the end of 7 days (excluding Saturdays, Sundays, and legal holidays) after the conferees of both Houses have been appointed to a committee of conference on a concurrent resolution on the budget, the conferees are unable to reach agreement with respect to all matters in disagreement between the two Houses, then the conferees shall submit to their respective Houses, on the first day thereafter on which their House is in session --
>
> (1) a conference report recommending those matters on which they have agreed and reporting in disagreement those matters on which they have not agreed; or
>
> (2) a conference report in disagreement, if the matter in disagreement is an amendment which strikes out the entire text of the concurrent resolution and inserts substitute text.

Congress honored this 7-day rule in the breach, and it may well have been unenforceable.

[352] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

[353] For a discussion of mathematical consistency, see *supra* note 340.

Note that section 305(b)(6) makes in order amendments that makes or maintains mathematical consistency. *See supra* p. 110.

LEGISLATION DEALING WITH CONGRESSIONAL BUDGET MUST BE HANDLED BY BUDGET COMMITTEES

SEC. 306.[354] No bill,[355] resolution, amendment,[356] motion, or conference report,[357] dealing with any matter which is within the jurisdiction[358] of the Committee on the Budget of either House shall be considered[359] in that House unless it is a bill or resolution which has been reported by the Committee on the Budget of that House (or from the consideration of which such committee has been discharged) or unless it is an

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[354] Section 306 is codified as amended at 2 U.S.C. § 637 (1988).

Section 904(c) provides that the Senate may waive or suspend section 306 only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 298.

[355] Because section 306 does not contain the words "as reported" here, points of order under section 306 should apply to bills and resolutions as amended by amendments against which points of order would lie under section 306. *Cf. infra* note 488 (regarding the meaning of "as reported" in section 311(a)).

[356] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303).

[357] Section 13207(a)(1)(D) of the Budget Enforcement Act struck "bill or resolution, and no amendment to any bill or resolution" here and inserted "bill, resolution, amendment, motion, or conference report." *See infra* p. 639.

[358] For a discussion of the Budget Committee's jurisdiction, see *infra* note 360.

[359] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

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amendment to such a bill or resolution.[360]

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[360] For examples of applications of the point of order under section 306, see, *e.g.*, 136 CONG. REC. S8,197 (June 19, 1990) (the Senate agreed to a Cranston unanimous consent request to waive points of order regarding a Heinz amendment regarding congressional action to remove Social Security trust funds from the definition of the deficit); 136 CONG. REC. S7,457-78 (June 6, 1990) (McCain motion to waive rejected 43-50 regarding his amendment no. 1995 regarding enhancing the President's rescission authority); 135 CONG. REC. S15,336-58 (Nov. 9, 1989) (Coats motion to waive rejected 40-51 regarding his amendment no. 1092 regarding enhancing the President's rescission authority); 133 CONG. REC. S11,025 (July 31, 1987) (Conrad motion to waive rejected 36-53 regarding his amendment no. 651 to H.J. Res. 324, Increase in the Public Debt Limit); 133 CONG. REC. S10,584 (July 23, 1987) (Domenici motion to waive rejected 47-49 regarding his amendment no. 631 to H.J. Res. 324, Increase in the Public Debt Limit, that would revise Gramm-Rudman-Hollings); 133 CONG. REC. S10,579 (July 23, 1987) (Chiles motion to waive approved 71-25 regarding his modified amendment no. 626 to H.J. Res. 324, Increase in the Public Debt Limit, that would revise Gramm-Rudman-Hollings); 129 CONG. REC. S3,587-603 (1983); Senate Precedent PRL19830322-002 (Mar. 22, 1983) (LEGIS, Rules database) (Heinz motion to waive tabled 56-41 regarding his amendment to remove Social Security trust funds from the unified budget).

Three sources provide the basis for the Budget Committee's jurisdiction. First, section 102(a) amended rule XXV of the Standing Rules of the Senate, which now reads as follows (in relevant part):

> (e)(1) Committee on the Budget, to which committee shall be referred all concurrent resolutions on the budget (as defined in section 3(a)(4) of the Congressional Budget Act of 1974) and all other matters required to be referred to that committee under titles III and IV of that Act, and messages, petitions, memorials, and other matters relating thereto.
>
> (2) Such committee shall have the duty --
>
> (A) to report the matters required to be reported by it under titles III and IV of the Congressional Budget Act of 1974;
>
> (B) to make continuing studies of the effect on budget outlays of relevant existing and proposed legislation and to report the results of such studies to the Senate on a recurring basis;
>
> (C) to request and evaluate continuing studies of tax expenditures, to devise methods of coordinating tax expenditures, policies, and programs with direct budget outlays, and to report the results of such studies to the Senate on a recurring basis; and
>
> (D) to review, on a continuing basis, the conduct by the Congressional Budget Office of its functions and duties.

STANDING RULES OF THE SENATE Rule XXV(e) (1990).

A second source of Budget committee Jurisdiction is the standing order on referral of budget process legislation. The Senate requires joint referral to the Budget and

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[360](...continued)
Governmental Affairs Committees of all legislation to change the budget and impoundment control process. The Senate agreed by unanimous consent on August 4, 1977:

> that legislation affecting the congressional budget process, as described below, be referred jointly to the Committees on the Budget and on Governmental Affairs. If one committee acts to report a jointly-referred measure, the other must act within 30 calendar days of continuous possession, or be automati[c]ally discharged.
>
> Legislative proposals affecting the congressional budget process to which this order applies are:
>
> First. The functions, duties, and powers of the Budget Committee -- as described in title I of the act;
>
> Second. The functions, duties, and powers of the Congressional Budget Office -- as described in title[s] II and IV of the act[;]
>
> Third. The process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt -- including subdivisions thereof. That process includes the establishment of:
>
> mandatory ceilings on spending and appropriations;
>
> a floor on revenues;
>
> timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriations bills; and
>
> enforcement mechanisms for the limits and timetables,
>
> all as described in titles III and IV of the act[;]
>
> Fourth. The limiting of backdoor spending device[s] -- as described in title IV of the act;
>
> Fifth. The timetables for Presidential submission of appropriations and authorization requests -- as described in title VI of the act;
>
> Sixth. The definitions of what constitutes impoundment -- such as "rescissions" and "deferrals," as provided in the Impoundment Control Act, title X;
>
> Seventh. The process and determination by which impoundments must be reported to and considered by Congress -- as provided in the Impoundment Control Act, title X;

(continued...)

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[360](...continued)

> Eighth. The mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X -- such as GAO review and lawsuits; and
>
> Ninth. The provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act -- as set forth in title I thereof.

123 CONG. REC. S13,553 (Aug. 4, 1977).

The reference to "30 calendar days of continuous possession" in the first paragraph of the standing order is so in the original. It probably should be to "30 calendar days of continuous session."

The Parliamentarian interprets the period of "30 calendar days of continuous session" to equate to 30 calendar days not interrupted by a sine die adjournment after the committee files its report with the Senate. In other words, "30 calendar days of continuous session" means 30 calendar days (including Saturdays, Sundays, legal holidays, and days in which the Senate stands in recess) unless the Senate adjourns sine die during those 30 days. If the Senate adjourns sine die during the 30 days, the 30 days begin counting again when the Senate next reconvenes.

Thus, on July 14, 1988, the Committee on Governmental Affairs ordered reported the Biennial Budget Act of 1988, S. 2478, 100th Cong., 2d Sess., 134 CONG. REC. S7,295-302 (June 7, 1988), sponsored by Senators Ford and Roth and others. On August 25, 1988, Senator Glenn, Chairman of the Committee on Governmental Affairs, reported the bill to the Senate, under the authority of an order of August 11, 1988, providing for filing during the August recess. On that date, August 25, the Chair referred the bill to the Committee on the Budget. Thirty calendar days thereafter, on September 26, 1988, the Senate discharged the Committee on the Budget and placed the bill on the Legislative Calendar under General Orders. 134 CONG. REC. S13,263 (Sept. 26, 1988) (measures placed on the calendar).

Similarly, on November 17, 1989, the Committee on Governmental Affairs ordered reported the Biennial Budget Act, S. 29, 101st Cong., 1st Sess., 135 CONG. REC. S291 (Jan. 25, 1989), sponsored by Senators Ford and Roth and others. On March 21, 1990, Senator Glenn, Chairman of the Committee on Governmental Affairs, reported the bill to the Senate and on that date, the Chair referred the bill to the Committee on the Budget. Thirty calendar days thereafter, on April 20, 1990, the Senate discharged the Committee on the Budget and placed the bill on the Legislative Calendar under General Orders. 1990 SEN. J. ____ (Apr. 20, 1990).

Again on August 4, 1990, the Committee on the Budget reported four budget process bills, the Honest Budget/Balanced Budget Act, S. 101, the Debt Ceiling Reform Act, S. 532, the Social Security Preservation Act, S. 2999, and the Federal Hospital Insurance Preservation Act, S. 3008. *See* 136 CONG. REC. S12,475 (Aug. 4, 1990). The Senate discharged the Governmental Affairs Committee and placed all four bills on the calendar. *See* 136 CONG. REC. S12,722 (Sept. 10, 1990). On August 30, 1990 the Committee on the Budget reported two more bills, the Gross Interest Legislation Act, S. 3011, and

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[360](...continued)
the National Priorities Review Act, S. 2835, each of which the Chair referred to the Committee on Governmental Affairs. *See* 136 CONG. REC. S12,724 (Sept. 10, 1990).

Specifying that an activity will not affect the deficit is a matter within the jurisdiction of the Budget Committee. *See, e.g.*, 136 CONG. REC. S5,405 (May 1, 1990). On May 1, 1990, during consideration of H.R. 4404 (Making dire emergency supplemental appropriations for disaster assistance, food stamps, unemployment compensation administration, and other urgent needs, and transfers, and reducing funds budgeted for military spending for the fiscal year ending September 30, 1990, and for other purposes), the chair ruled that the following language contained matters within the jurisdiction of the Budget Committee, in violation of section 306:

> Sec. 320. Section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended --
>
> (1) in subparagraph (J), by striking "and" at the end thereof;
>
> (2) in subparagraph (K), by striking the period at the end thereof and inserting a semicolon; and
>
> (3) by adding after subparagraph (K) the following:
>
> > "(L) assuming, for purposes of this paragraph, paragraph(3)(A)(i), and the Congressional Budget Act of 1974, and notwithstanding sections 3(6) and 406(b) of that Act, that disbursements and receipts equalling the principal amounts of borrowings or repayments of principal of direct loans from the Federal Financing Bank to the Resolution Trust Corporation that are used for working capital requirements in liquidating Federal deposit insurance claims or for any other working capital purpose (pursuant to title V of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989), shall not alter the deficit or produce any change in the budget baseline, and
> >
> > "(M) assuming, for purposes of this paragraph, paragraph 3(A)(i), and the Congressional Budget Act of 1974, notwithstanding sections 3(6) and 406(b) of that Act, and excluding receipts and disbursements subject to subparagraph (L), the sum of the amount of any offsetting collections from the Resolution Funding Corporation for purchase of capital certificates and any other offsetting collections of the Resolution Trust Corporation in any fiscal year shall equal the amount of any Resolution Trust Corporation disbursements for that fiscal year, effective beginning with the fiscal year 1991 budget.".

H.R. 4404, 101st Cong., 2d Sess. § 320, 136 CONG. REC. S4,991, S4,999 (Apr. 25, 1990) (as reported to the Senate). Upon a point of order raised by Senator Hollings against the committee amendment under section 306, the amendment fell. 136 CONG. REC. S5,405
(continued...)

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[360](...continued)
(May 1, 1990). For the discussion of the point of order and the section, see *id.* at 5,383-405.

Any new mechanism to enhance the President's power to rescind funds fall within the Budget Committee's jurisdiction. *See* 136 CONG. REC. S7,457-78 (June 6, 1990) (McCain amendment no. 1995 regarding enhancing the President's rescission authority ruled within the Budget Committee's jurisdiction); 135 CONG. REC. S15,336-58 (Nov. 9, 1989) (Coats amendment no. 1092 regarding enhancing the President's rescission authority ruled within the Budget Committee's jurisdiction).

On June 6, 1990, the Senate considered a McCain amendment (identical to S. 1553, 101st Cong., 1st Sess., 135 CONG. REC. S10,293-96 (Aug. 4, 1989)) that would have added a new title to the Impoundment Control Act of 1974 changing what would happen if Congress failed to act on a rescission. *See* 136 CONG. REC. S7,457 (June 6, 1990) (statement of Sen. McCain). After the Senate rejected 43-50 Senator McCain's motion to waive section 306 of the Congressional Budget Act, the Chair ruled:

> The amendment by the Senator from Arizona modifies the President's authority to rescind funds, which is a subject within the Budget Committee's jurisdiction.

136 CONG. REC. S7,478 (June 6, 1990) (Sen. Wirth acting as Presiding Officer).

The Senate requires joint referral to the Budget and Appropriations Committees of all special messages from the President on recommended rescissions and deferrals and all bills and resolutions introduced with respect to such messages under the senate resolution the referral of impoundment legislation:

> S. RES. 45
>
> Resolved,
>
> 1. That messages received pursuant to title X of the Congressional Budget and Impoundment Control Act be referred concurrently to the Appropriations Committee, to the Budget Committee, and to any other appropriate authorizing committee.
>
> 2. That bills, resolutions, and joint resolutions introduced with respect to rescissions and deferrals shall be referred to the Appropriations Committee, the Budget Committee, and pending implementation of section 410 of the Congressional Budget Impoundment Control Act and subject to section 401(d), to any other committee exercising jurisdiction over contract and borrowing authority programs as defined by section 401(c)(2) (A) and (B). The Budget Committee and such other committees shall report their views, if any, to the Appropriations Committee within 20 days following referral of such messages, bills, resolutions, or joint resolutions. The Budget Committee's consideration shall extend only to macroeconomic implications, impact on priorities and aggregate spending levels, and the legality of the President's use of the deferral and rescission mechanism under title X. The Appropriations and authorizing committees shall exercise their normal responsibilities over programs and priorities.

(continued...)

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[360](...continued)

> 3. If any Committee to which a bill or resolution has been referred recommends its passage, the Appropriations Committee shall report that bill or resolution together with its views and reports of the Budget and any appropriate authorizing committees to the Senate within:
>
> A. the time remaining under the Act in the case of rescissions, or
>
> B. within 20 days in the case of deferrals.
>
> 4. The 20 day period referred to herein means 20 calendar days; and for the purposes of computing the 20 days, recesses or adjournments of the Senate for more than 3 days to a day certain shall not be counted; and for recesses and adjournments of more than 30 calendar days, continuous duration or the sine die adjournment of a session, the 20 day period shall begin anew on the day following the reconvening of the Senate.

The resolution appears at 121 CONG. REC. S1,280 (Jan. 30, 1975) and was adopted by reference at 121 CONG. REC. S1,302 (Jan. 30, 1975).

The Senate revised paragraph 2 of the standing order on April 11, 1986. As originally agreed to on January 30, 1975, paragraph 2 read as follows:

> 2. That bills and resolutions introduced with respect to such messages shall be referred to the Appropriations Committee, the Budget Committee, and pending implementation of section 401 of the Congressional Budget and Impoundment Control Act and subject to sec. 401(d), to any other committee exercising jurisdiction over contract and borrowing authority programs as defined by sec. 401(c)(2) (A) and (B). The Budget Committee and such other committees shall report their views, if any, to the Appropriations Committee within 20 days following referral of such messages, bills, or resolutions. The Budget Committee's consideration shall extend only to macroeconomic implications, impact on priorities and aggregate spending levels, and the legality of the President's use of the deferral and rescission mechanism under title X. The Appropriations and authorizing committees shall exercise their normal responsibilities over programs and priorities.

S. Res. 45, 94th Cong., 1st Sess, § 2, 121 CONG. REC. S1,280 (Jan. 30, 1975).

In making the unanimous consent request to change this paragraph, Senator Rudman, acting on behalf of the Majority Leader, made the following statement:

> Mr. RUDMAN. Mr. President, Senate Resolution 45 adopted under a unanimous consent agreement on January 30, 1975, governs the referral of impoundment legislation in the Senate. Under this order, all special messages from the President pursuant to title X of the Congressional Budget and Impoundment Control Act and all bills and resolutions introduced with respect to such messages are referred concurrently to the Appropriations Committee, the Budget Committee, and to the appropriate authorizing committee.

(continued..)

HOUSE COMMITTEE ACTION ON ALL APPROPRIATION BILLS TO BE COMPLETED BY JUNE 10

SEC. 307.[361] On or before June 10 of each year, the Committee on Appropriations of the House of Representatives shall report annual appropriation bills[362] providing new budget authority[363] under the jurisdiction of all of its subcommittees for the fiscal year which begins on October 1 of that year.

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[360](...continued)

> Section 1011 of the Impoundment Control Act provides that deferral disapprovals take the form of a simple resolution of one House. This is no longer a proper course of action, given the Supreme Court decision in INS versus Chadha that the one-House legislative veto is unconstitutional. Deferral disapprovals must now take the form of a bill or joint resolution.
>
> Given this, I ask unanimous consent that the second paragraph of the standing order governing the referral of matters dealing with rescissions and deferrals be revised, as of January 21, 1986, to allow the re-referral of bills and joint resolutions disapproving deferrals to the same committees now having jurisdiction over title X impoundment resolutions.

132 CONG. REC. S4,157 (Apr. 11, 1986). Senator Rudman referred to Immigration and Naturalization Serv. v. Chadha, 462 U.S. 919 (1983).

In the absence of any objection, it was so ordered. *Id.*

[361] Section 307 is codified as amended at 2 U.S.C. § 638 (1988).

[362] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

[363] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

REPORTS, SUMMARIES, AND PROJECTIONS OF CONGRESSIONAL BUDGET ACTIONS

SEC. 308.[364] (a) REPORTS ON LEGISLATION PROVIDING NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, OR NEW CREDIT AUTHORITY, OR PROVIDING AN INCREASE OR DECREASE IN REVENUES OR TAX EXPENDITURES. --

(1) Whenever a committee of either House reports to its House a bill or resolution, or committee amendment thereto, providing new budget authority[365] (other than continuing appropriations), new spending authority described in section 401(c)(2),[366] or new credit authority,[367] or providing an increase or decrease in revenues or tax expenditures[368] for a fiscal year (or fiscal years),[369] the report accompanying that bill or resolution shall contain a statement, or the committee shall make available such a statement in the case of an approved committee amendment which is not reported to its House, prepared after consultation with the Director of the Congressional Budget Office --

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[364] Section 308 is codified as amended at 2 U.S.C. § 639.

[365] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[366] *See infra* pp. 203-206.

[367] Section 402(b) defines "*new* credit authority" (*see infra* p. 212), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

[368] Section 3(3) defines "tax expenditures." *See supra* p. 15.

[369] Section 13206(a)(1) of the Budget Enforcement Act added the parenthetical "(or fiscal years)." *See infra* p. 638.

(A) comparing the levels in such measure to the appropriate allocations in the reports submitted under section 302(b)[370] for the most recently agreed to concurrent resolution on the budget for such fiscal year (or fiscal years);[371]

(B) including an identification of any new spending authority described in section 401(c)(2)[372] which is contained in such measure and a justification for the use of such financing method instead of annual appropriations;

(C) containing a projection by the Congressional Budget Office of how such measure will affect the levels of such budget authority,[373] budget outlays,[374] spending authority,[375] revenues, tax expenditures,[376] direct loan obligations, or primary loan guarantee commitments under existing law for such fiscal year (or fiscal years)[377] and each of the four ensuing fiscal years, if timely submitted before such report is filed; and

(D) containing an estimate by the Congressional Budget Office of the level of new budget author-

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[370] *See supra* pp. 71-73.

[371] Section 13206(a)(2) of the Budget Enforcement Act added the parenthetical "(or fiscal years)." *See infra* p. 638.

[372] *See infra* pp. 203-206.

[373] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[374] Section 3(1) defines "budget outlays." *See supra* p. 11.

[375] Section 401(c)(2) defines "spending authority." *See infra* pp. 203-206.

[376] Section 3(3) defines "tax expenditures." *See supra* p. 15.

[377] Section 13206(a)(3) of the Budget Enforcement Act added the parenthetical "(or fiscal years)." *See infra* p. 638.

ity[378] for assistance to State and local governments provided by such measure, if timely submitted before such report is filed.

(2) Whenever a conference report is filed in either House and such conference report or any amendment reported in disagreement or any amendment contained in the joint statement of managers to be proposed by the conferees in the case of technical disagreement on such bill or resolution provides new budget authority[379] (other than continuing appropriations), new spending authority described in section 401(c)(2),[380] or new credit authority,[381] or provides an increase or decrease in revenues for a fiscal year (or fiscal years),[382] the statement of managers accompanying such conference report shall contain the information described in paragraph (1),[383] if available on a timely basis. If such information is not available when the conference report is filed, the committee shall make such information available to Members as soon as practicable prior to the consideration of such conference report.

(b) UP-TO-DATE TABULATIONS OF CONGRESSIONAL BUDGET ACTION. --

(1) The Director of the Congressional Budget Office shall issue to the committees of the House of Representa-

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[378] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[379] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[380] *See infra* pp. 203-206.

[381] Section 402(b) defines "*new* credit authority" (*see infra* p. 212), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

[382] Section 13206(b) of the Budget Enforcement Act added the parenthetical "(or fiscal years)." *See infra* p. 638.

[383] *See supra* pp. 123-125.

tives and the Senate reports on at least a monthly[384] basis detailing and tabulating the progress of congressional action on bills and resolutions providing new budget authority,[385] new spending authority described in section 401(c)(2),[386] or new credit authority,[387] or providing an increase or decrease in revenues or tax expenditures[388] for each fiscal year covered by a concurrent resolution on the budget.[389] Such reports shall include but are not limited to an up-to-date tabulation comparing the appropriate aggregate and functional levels (including outlays[390]) included in the most recently adopted concurrent resolution on the budget with the levels provided in bills and resolutions reported by committees or adopted by either House or by the Congress, and with the levels provided by law for the fiscal year preceding the first fiscal year covered by the appropriate concurrent resolution.[391]

(2) The Committee on the Budget of each House shall make available to Members of its House summary budget

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[384] As a matter of practice, the Director issues these reports more frequently, as much as weekly during some times of the year. For example, the Director issued at least 29 reports in 1989. *See infra* note 392.

[385] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[386] *See infra* pp. 203-206.

[387] Section 402(b) defines "*new* credit authority" (*see infra* p. 212), in part by reference to the definition of "credit authority" in section 3(10) (*see supra* p. 19).

[388] Section 3(3) defines "tax expenditures." *See supra* p. 15.

[389] Section 13206(c)(1) of the Budget Enforcement Act struck the words "for a fiscal year" at this point and inserted "for each fiscal year covered by a concurrent resolution on the budget." *See infra* p. 638.

[390] Section 3(1) defines "outlays." *See supra* p. 11.

[391] Section 13206(c)(2) of the Budget Enforcement Act struck the words "such fiscal year" at this point and inserted "the first fiscal year covered by the appropriate concurrent resolution." *See infra* p. 638.

scorekeeping reports.[392] Such reports --

(A) shall be made available on at least a monthly basis, but in any case frequently enough to provide Members of each House an accurate representation of the current status of congressional consideration of the budget;

(B) shall include, but are not limited to, summaries of tabulations provided under subsection (b)(1);[393] and

(C) shall be based on information provided under subsection (b)(1)[394] without substantive revision.

The chairman of the Committee on the Budget of the House of Representatives shall submit such reports to the Speaker.

(c) Five-Year Projection of Congressional Budget Action. -- As soon as practicable after the beginning of each fiscal year, the Director of the Congressional Budget Office

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[392] The Chairman of the Budget Committee regularly submits these budget scorekeeping reports for printing in the *Congressional Record*. For example, in the 101st Congress, see 136 Cong. Rec. S6,266-67 (May 15, 1990) (statement of Budget Committee Chairman Sasser); *id.* at S5,927-28 (May 9, 1990); *id.* at S5,372 (Apr. 30, 1990); *id.* at S4,953 (Apr. 24, 1990); *id.* at S3,913 (Apr. 3, 1990); *id.* at S3,227 (Mar. 26, 1990); *id.* at S2,954-55 (Mar. 21, 1990); *id.* at S2,212 (Mar. 6, 1990); *id.* at S1,773-74 (Feb. 27, 1990); *id.* at S1,648-49 (Feb. 26, 1990); *id.* at S1,040 (Feb. 7, 1990); *id.* at S924-26 (Feb. 6, 1990); 135 Cong. Rec. S16,426-27 (Nov. 20, 1989); *id.* at S15,576-77 (Nov. 14, 1989); *id.* at S15,201 (Nov. 7. 1989); *id.* at S14,617 (Nov. 2, 1989); *id.* at S14,616-17 (Nov. 2, 1989); *id.* at S11,916-17 (Sept. 26, 1989); *id.* at S11,915-16 (Sept. 26, 1989); *id.* at S11,395-96 (Sept. 19, 1989); *id.* at S11,394-95 (Sept. 19, 1989); *id.* at S10,373 (Aug. 4, 1989); *id.* at S9,395-96 (Aug. 1, 1989); *id.* at S8,654-56 (July 24, 1989); *id.* at S8,074-75 (July 17, 1989); *id.* at S7,843-44 (July 12, 1989); *id.* at S7,004-05 (June 20, 1989); *id.* at S6,566 (June 13, 1989); *id.* at S6,346-47 (June 7, 1989); *id.* at S6,059 (June 1, 1989); *id.* at S5,432 (May 16, 1989); *id.* at S5,060-61 (May 9, 1989); *id.* at S4,648-49 (May 2, 1989); *id.* at S4,065 (Apr. 17, 1989); *id.* at S3,558-59 (Apr. 10, 1989); *id.* at S3,392 (Apr. 5, 1989); *id.* at S2,746 (Mar. 15, 1989); *id.* at S2,029 (Mar. 2, 1989); *id.* at S1,863 (Feb. 28, 1989); *id.* at S1,392 (Feb. 8, 1989); *id.* at S1,126 (Feb. 2, 1989).

[393] *See supra* pp. 125-126.

[394] *See supra* pp. 125-126.

shall issue a report projecting for the period of 5 fiscal years beginning with such fiscal year --

(1) total new budget authority[395] and total budget outlays[396] for each fiscal year in such period;

(2) revenues to be received and the major sources thereof, and the surplus or deficit,[397] if any, for each fiscal year in such period;

(3) tax expenditures[398] for each fiscal year in such period;

(4) entitlement authority[399] for each fiscal year in such period; and

(5) credit authority[400] for each fiscal year in such period.

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[395] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[396] Section 3(1) defines "budget outlays." *See supra* p. 11.

[397] Section 3(6) defines "deficit." *See supra* p. 16.

[398] Section 3(3) defines "tax expenditures." *See supra* p. 15.

[399] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204).

[400] Section 3(10) defines "credit authority." *See supra* p. 19.

HOUSE APPROVAL OF REGULAR APPROPRIATION BILLS[401]

SEC. 309.[402] It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has approved annual appropriation bills[403] providing new budget authority[404] under the jurisdiction of all the subcommittees of the Committee on Appropriations for the fiscal year beginning on October 1 of such year. For purposes of this section, the chairman of the Committee on Appropriations of the House of Representatives shall periodically advise the Speaker as to changes in jurisdiction among its various subcommittees.

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[401] Compare the parallel point of order in the House in connection with completion of reconciliation in section 310(f). *See infra* p. 144.

[402] Section 309 is codified as amended at 2 U.S.C. § 640.

[403] Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

[404] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

RECONCILIATION

SEC. 310.[405] (a) INCLUSION OF RECONCILIATION DIRECTIVES IN CONCURRENT RESOLUTIONS ON THE BUDGET.[406] -- A concurrent resolution on the budget for any fiscal year,[407] to the extent

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[405] Section 310 is codified as amended at 2 U.S.C. § 641.

[406] Section 201(b) of Gramm-Rudman-Hollings (*see infra* p. 345) revised subsections 310(a) and 310(b). Those subsections originally addressed reconciliation in the context of a second budget resolution. For the text of section 310(a) as enacted in 1974, see *infra* note 417 (at the end of this subsection).

[407] No limitations apply to how many years may be covered by reconciliation instructions. 127 CONG. REC. S2,754 (1981); Senate Precedent PRL19810326-001 (Mar. 26, 1981) (LEGIS, Rules database). On March 26, 1981, during consideration of S. Con. Res. 9, the Third Concurrent Resolution on the Budget for Fiscal Year 1981, Senator Hatfield posed a series of parliamentary inquiries of the Chair (Senator Humphrey of New Hampshire):

> Mr. HATFIELD. Mr. President, if this present Budget Committee had desired to apply program reductions beyond the year 1983, and set target figures on those subsequent fiscal years -- and let me cite a hypothetical situation, that they would want to set, say, program reductions, target figures, for 1984, 1985, 1986, 1987, 1988, 1989, 1990, up to the year 2000, would that have been within the power of the Budget Committee as interpreted by the Chair under the Budget Act?
>
> The PRESIDING OFFICER. The issue is out-year reconciliations and on that issue the Budget Act itself is silent. The Senate chose to permit out-year budget reconciliation in a previous year. Therefore, the Chair would not be advised that a point of order would lie against out-year reconciliation instructions.
>
> Mr. ROBERT C. BYRD addressed the Chair.
>
> The PRESIDING OFFICER. The Chair had not quite finished -- no matter what the year was. The Senator from Oregon has the floor.
>
> Mr. HATFIELD. Do I understand that the Chair -- I would be glad to yield to the minority leader, but I have to get this clear in my mind. I think I am in frequency with the Chair, I am not sure, but do I understand the Chair states there are no out-year limitations that would apply to a resolution of this kind, which is a subsequent resolution to the first concurrent resolution?
>
> The PRESIDING OFFICER. Not in the Budget Act.

Id.

necessary to effectuate the provisions and requirements of such resolution, shall --

(1) specify the total amount by which --

(A) new budget authority[408] for such fiscal year;

(B) budget authority[409] initially provided for prior fiscal years;

(C) new entitlement authority[410] which is to become effective during such fiscal year; and

(D) credit authority[411] for such fiscal year,

contained in laws, bills, and resolutions within the jurisdiction of a committee, is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;

(2) specify the total amount by which revenues are to be changed and direct that the committees having jurisdiction[412] to determine and recommend changes in the

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[408] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[409] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[410] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204).

[411] Section 3(10) defines "credit authority." *See supra* p. 19.

[412] Rule XXV of the Standing Rules of the Senate provides (in relevant part):

> (i) **Committee on Finance,** to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:
>
> . . . .
>
> 8. Revenue measures generally, except as provided in the Congressional Budget Act of 1974.

(continued...)

revenue laws, bills, and resolutions to accomplish a change of such total amount;

(3) specify the amounts by which the statutory limit on the public debt[413] is to be changed and direct the committee having jurisdiction[414] to recommend such change; or

(4) specify and direct any combination of the matters described in paragraphs (1),[415] (2),[416] and (3) (including a direction to achieve deficit reduction).[417]

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[412](...continued)

STANDING RULES OF THE SENATE Rule XXV(i)(8) (June 1, 1988).

[413] The public debt limit is set at 31 U.S.C. § 3101.

[414] Rule XXV of the Standing Rules of the Senate provides (in relevant part):

> **(i) Committee on Finance,** to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:
>
> 1. Bonded debt of the United States, except as provided in the Congressional Budget Act of 1974.

STANDING RULES OF THE SENATE Rule XXV(i)(1) (June 1, 1988).

[415] *See supra* p. 131.

[416] *See supra* pp. 131-132.

[417] Section 13207(d) of the Budget Enforcement Act added the parenthetical "(including a direction to achieve deficit reduction)" so as to remove all doubt that a budget resolution may instruct a committee to achieve unspecified deficit reduction -- through reductions of either revenues or outlays, at the committee's option. *See infra* p. 642.

The Chair will not look to the effect of reconciliation instructions, only to their form. *See supra* note 123.

Reconciliation instructions may not specify that the reporting committee must achieve its savings from certain types of programs or raise its revenues in specific ways. 128 CONG. REC. S5,506 (1982); Senate Precedent PRL19820519-002 (May 19, 1982) (LEGIS, Rules database) (inquiries of Sen. Dole); 131 CONG. REC. S5,863 (1985); Senate Precedent PRL19850509-007 (May 9, 1985) (LEGIS, Rules database) (inquiry of Sen. Helms regarding amendment by Sen. Bradley).

(continued...)

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[417](...continued)

Nonetheless, pursuant to this paragraph and section 301(b)(4) (the "elastic clause," *see supra* p. 53), budget resolutions have regularly instructed committees to achieve savings in categories not specifically enumerated in the listing in section 310(a). For example, budget resolutions regularly specify the amount by which reporting committees must reduce "outlays." Similarly, budget resolutions regularly distinguish between spending as defined in section 401(c)(2)(C) and other spending. In several instances, as well, the Senate has passed budget resolutions that have included reconciliation instructions that specify increases in "contributions." *See* S. Con. Res. 30, 101st Cong., 1st Sess., § § 6(b), 6(c), 6(j) & 6(k) (1989) (instructions to the Senate Committee on Agriculture, Nutrition, and Forestry, the Senate Committee on Banking, Housing, and Urban Affairs, the House Committee on Agriculture, and the House Committee on Banking, Finance, and Urban Affairs); S. Con. Res. 48, 100th Cong., 1st Sess., § § 4(b) & 4(l) (1987) (instructions to the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture); S. Con. Res. 120, 99th Cong., 2d Sess., § § 2(f) & 2(q) (1986) (instructions to the Senate Committee on Energy and Natural Resources and the House Committee on Energy and Commerce); S. Con. Res. 32, 99th Cong., 1st Sess., § § 2(j) & 2(x) (1985) (instructions to the Senate Committee on Governmental Affairs and the House Committee on Post Office and Civil Service).

Section 201(b) of Gramm-Rudman-Hollings (*see infra* p. 345) revised subsection 310(a). That subsection originally addressed reconciliation in the context of a second budget resolution. As enacted in 1974, section 310(a) read:

> SECOND REQUIRED CONCURRENT RESOLUTION AND RECONCILIATION PROCESS
>
> SEC. 310. (a) REPORTING OF CONCURRENT RESOLUTION. -- The Committee on the Budget of each House shall report to its House a concurrent resolution on the budget which reaffirms or revises the concurrent resolution on the budget most recently agreed to with respect to the fiscal year beginning on October 1 of such year. Any such concurrent resolution on the budget shall also, to the extent necessary --
>
> (1) specify the total amount by which --
>
> (A) new budget authority for such fiscal year;
>
> (B) budget authority initially provided for prior fiscal years; and
>
> (C) new spending authority described in section 401(c)(2)(C) which is to become effective during such fiscal year,
>
> contained in laws, bills, and resolutions within the jurisdiction of a committee, is to be changed and direct that committee to determine and recommend changes to accomplish a change of such total amount;
>
> (2) specify the total amount by which revenues are to be

(continued...)

(b) LEGISLATIVE PROCEDURE. -- If a concurrent resolution containing directives to one or more committees to determine and recommend changes in laws, bills, or resolutions is agreed to in accordance with subsection (a),[418] and --

(1) only one committee of the House or the Senate is directed to determine and recommend changes, that committee shall promptly make such determination and recommendations and report to its House reconciliation legislation containing such recommendations; or

(2) more than one committee of the House or the Senate is directed to determine and recommend changes, each such committee so directed shall promptly make such determination and recommendations and submit[419] such recommendations to the Committee on the Budget of its

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[417](...continued)

changed and direct that the committees having jurisdiction to determine and recommend changes in the revenue laws, bills, and resolutions to accomplish a change of such total amount;

(3) specify the amount by which the statutory limit on the public debt is to be changed and direct the committees having jurisdiction to recommend such change; or

(4) specify and direct any combination of the matters described in paragraphs (1), (2), and (3).

Any such concurrent resolution may be reported, and the report accompanying it may be filed in either House notwithstanding that that House is not in session on the day on which such concurrent resolution is reported.

[418] *See supra* pp. 130-132.

[419] Committees must comply with the provisions of rule XXVI(7)(a) when submitting their recommendations under this section. Rule XXVI(7)(a)(1) provides (among other things) that "no measure or matter or *recommendation* shall be reported from any committee unless a majority of the committee were physically present. STANDING RULES OF THE SENATE Rule XXVI(7)(a)(1) (1990) (emphasis added). Rule XXVI(7)(a)(3) requires (among other things): "The vote of any committee to report a measure or matter shall require the concurrence of a majority of the members of the committee who are present." *Id.* Rule XXVI(7)(a)(3).

House, which, upon receiving all such recommendations,[420]

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[420] This language imposes upon the Budget Committee the duty to report promptly when it receives "all such recommendations." Thus, the Budget Committee may include in reconciliation legislation material reported to it after the deadline in the budget resolution's reconciliation instructions, so long as the Budget Committee has not yet reported by the time the tardy committee reports. *See* 135 CONG. REC. S12,589 (Oct. 4, 1989) (statement of Budget Committee Chairman Sasser). The Chairman of the Budget Committee has put it this way:

RECONCILIATION QUESTIONS

> Mr. SASSER. Mr. President. The distinguished Republican leader gave notice yesterday of his intent to propound four parliamentary inquiries of the Chair regarding the reconciliation process pursuant to the Congressional Budget Act of 1974. I rise today to address these inquiries from the perspective of the Committee on the Budget.
>
> First, the Republican leader asks: "Can the Senate Budget Committee incorporate into the reconciliation bill, pursuant to the congressional budget resolution, material which was reported after August 4, 1989?"
>
> Mr. President, from the perspective of the Committee on the Budget, the answer is "Yes." Let me quote from the controlling statute, section 310(b) of the Congressional Budget Act: "the Committee on the Budget, . . . upon receiving all such recommendations, shall report to its House reconciliation legislation."
>
> Two things are worth noting about this statutory requirement. First, it is mandatory. The statute says the Budget Committee "shall" report. Second, it only comes into effect upon the happening of a contingency: "[U]pon receiving all such recommendations." The mandatory requirement for the Budget Committee to report only ripens when all instructed committees have reported.
>
> Now what happens if the deadline for reporting reconciliation arrives and all committees have not reported? In this situation, we have to fall back on the Standing Rules of the Senate. Rule 25(e)(2) gives the Committee on the Budget jurisdiction over "matters required to be reported by it under titles III and IV of the Congressional Budget Act of 1974." Now the reconciliation legislation is a "matter . . . under title III." It is a creature of section 310 of the Budget Act.
>
> Under this rule, in the absence of specific constraints, the Budget Committee has jurisdiction over the reconciliation bill just as other committees have jurisdiction over other bills within their jurisdiction. Thus, after the deadline has passed, the Budget Committee may report out the reconciliation bill absent the contributions of the tardy committees, or the Budget Committee may wait for all committees to report. Only when all committees report, does the Budget Committee's obligation ripen.
>
> What becomes of the bill that includes a title that is reported late?

(continued...)

shall report to its House reconciliation legislation carrying out all such recommendations without any substantive revision.

For purposes of this subsection, a reconciliation resolution is a concurrent resolution directing the Clerk of the House of Representatives or the Secretary of the Senate, as the case may be, to make specified changes in bills and resolutions which have not been enrolled.[421]

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[420](...continued)

> This lateness is a factor that the Chair must take into account in determining whether the bill as a whole constitutes a reconciliation bill deserving of the procedural protections set forth in the statute. It is a factor, but I should think a rather minor factor when weighed along with whether the other requirements are met, that is whether the committees instructed have achieved deficit reduction of the right amount, whether they have done so in their jurisdiction, and whether provisions are otherwise extraneous or non-germane.
>
> Should a title reported late be subject to any extraordinary remedies? We submit, no. The remedy for failure to comply with the amount of reconciliation instructions is that any Senator may rise and offer a motion to recommit with instructions to report back forthwith an amendment that would bring the title into complete compliance.
>
> But could that remedy apply here? It would make no sense. There is no possible amendment that could make the committee's title comply with the deadline for reporting recommendations.
>
> There is no way it could be sent back and the clock turned back to make it comply with the time requirement.
>
> Now, should the tardy committee be otherwise punished? The Committee on the Budget would respond no. There is sufficient sanction in the threat that the Budget Committee might report the reconciliation bill and the Senate might consider it without that committee's title. In essence, the committee that reports in a tardy fashion, gambles on the patience of the Budget Committee and on the patience of the Senate leadership.

Id. (The Republican leader never propounded of the Chair the inquiries that he said he would.)

[421] Pursuant to this paragraph and section 301(b)(3) (*see supra* p. 53), reconciliation provisions in a budget resolution may direct the development of a reconciliation resolution. Such a reconciliation resolution could direct the Clerk of the House or the Secretary of the Senate to revise certain bills on which enrollment has been delayed pursuant to a budget resolution provision requiring delayed enrollment. Section 301(b)(3) provides for delayed enrollment provisions. *See supra* p. 53 & note 142. Congress has not included this reconciliation resolution procedure in any budget resolution.

(c) COMPLIANCE WITH RECONCILIATION DIRECTIONS.[422] -- (1)[423] Any committee of the House of Representatives or the Senate that is directed, pursuant to a concurrent resolution on the budget, to determine and recommend changes of the type described in paragraphs (1)[424] and (2)[425] of subsection (a) with respect to laws within its jurisdiction, shall be deemed to have complied with such directions --

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[422] If a committee fails to comply with the reconciliation instructions in the budget resolution, it is in order for any Senator to offer a motion to recommit the reconciliation bill with instructions to report back forthwith with an amendment -- which need not be germane -- that achieves those savings. Senate Precedent PRL19810617-001 (June 17, 1981) (LEGIS, Rules database); *see also* SENATE COMM. ON THE BUDGET, OMNIBUS RECONCILIATION ACT OF 1981, S. REP. No. 97-139, 97th Cong., 1st Sess. 11 (1981); SENATE COMM. ON THE BUDGET, OMNIBUS RECONCILIATION ACT OF 1982, S. REP. No. 97-504, 97th Cong., 2d Sess. 6 (1982); SENATE COMM. ON THE BUDGET, OMNIBUS RECONCILIATION ACT OF 1983, S. REP. No. 98-300, 98th Cong., 1st Sess. 5 (1983); SENATE COMM. ON THE BUDGET, CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985, S. REP. No. 99-146, 99th Cong., 1st Sess. 5 (1985); SENATE COMM. ON THE BUDGET, SIXTH OMNIBUS BUDGET RECONCILIATION ACT, 1986, S. REP. No. 99-348, 99th Cong., 2d Sess. 5 (1986). Thus, failure to comply causes the offending committee to lose the protection of the requirement of section 305(b)(2) (*see supra* p. 100 & note 329) that amendments be germane and may mean that another Senator will write the offending committee's provisions on the floor. For the parallel enforcement mechanism in the House, see section 310(d)(5) *infra* p. 142.

If a committee submits its reconciliation recommendations to the Budget Committee after the deadline that the budget resolution sets forth for submitting recommendations to the Budget Committee, and the Budget Committee nonetheless includes the tardy committee's reconciliation recommendations in the reconciliation legislation that it reports, this extraordinary remedy is not available to remedy the failure of the committee to comply with the deadline. *See* 135 CONG. REC. S12,589 (Oct. 4, 1989) (statement of Budget Committee Chairman Sasser). For excerpts of the statement cited, see *supra* note 420.

As long as a preponderance of its subject matter has a budgetary impact, a reconciliation bill may contain non-budgetary amendments to substantive law, and still be protected under the Congressional Budget Act. 127 CONG. REC. S6,664 (1981); Senate Precedent PRL19810622-001 (June 22, 1981) (LEGIS, Rules database) (statement of Majority Leader Baker).

[423] Section 13207(c)(1) of the Budget Enforcement Act added the number (1) here. *See infra* p. 641.

[424] That is, budget, entitlement, and credit authority. *See supra* p. 131.

[425] That is, revenues. *See supra* pp. 131-132.

(A)[426] if --

(i)[427] the amount of the changes of the type described in paragraph (1)[428] of such subsection recommended by such committee do no exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under such paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1)[429] and (2)[430] of such subsection, and

(ii)[431] the amount of the changes of the type described in paragraph (2)[432] of such subsection recommended by such committee do no exceed or fall below the amount of the changes such committee was directed by such concurrent resolution to recommend under that paragraph by more than 20 percent of the total of the amounts of the changes such committee was directed to make under paragraphs (1)[433] and (2)[434] of such subsection, and

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[426] Section 13207(c)(3) of the Budget Enforcement Act redesignated this subparagraph from (1) to (A). *See infra* p. 641.

[427] Section 13207(c)(2) of the Budget Enforcement Act redesignated this clause from (A) to (i). *See infra* p. 641.

[428] That is, budget, entitlement, and credit authority. *See supra* p. 131.

[429] That is, budget, entitlement, and credit authority. *See supra* p. 131.

[430] That is, revenues. *See supra* pp. 131-132.

[431] Section 13207(c)(2) of the Budget Enforcement Act redesignated this clause from (B) to (ii). *See infra* p. 641.

[432] That is, revenues. *See supra* pp. 131-132.

[433] That is, budget, entitlement, and credit authority. *See supra* p. 131.

[434] That is, revenues. *See supra* pp. 131-132.

(B)[435] if the total amount of the changes recommended by such committee is not less than the total of the amounts of the changes such committee was directed to make under paragraphs (1)[436] and (2)[437] of such subsection.[438]

(2)(A)[439] Upon the reporting to the Committee on the Budget of the Senate of a recommendation that shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of that committee may file with the Senate appropriately revised allocations under section 302(a)[440] and revised functional levels and aggregates to carry out this subsection.

(B) Upon the submission to the Senate of a conference report recommending a reconciliation bill or resolution in which a committee shall be deemed to have complied with such directions solely by virtue of this

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[435] Section 13207(c)(3) of the Budget Enforcement Act redesignated this subparagraph from (2) to (B). *See infra* p. 641.

[436] That is, budget, entitlement, and credit authority. *See supra* p. 131.

[437] That is, revenues. *See supra* pp. 131-132.

[438] Because to some extent this section makes outlays and revenues fungible, some refer to it as the "fungibility rule."

For an example of the rule in operation, take the case of a budget resolution that instructs a committee to achieve $3 million in outlay reductions and $7 million in revenue increases, for a total of $10 million in deficit reduction. By virtue of this section, that committee may permissibly achieve outlay reductions as low as $1 million ($3 million minus 20 percent of $10 million, or $2 million), as long as it achieves a total of at least $10 million in deficit reduction by also achieving at least $9 million in revenues increases. Alternatively, the committee may achieve revenue increases as low as $5 million ($7 million minus 20 percent of $10 million, or $2 million), as long as it achieves a total of at least $10 million in deficit reduction by also achieving outlay reductions of at least $5 million.

[439] Section 13207(c)(4) of the Budget Enforcement Act added this paragraph. *See infra* p. 641. Prior to the enactment of the Budget Enforcement Act, the possibility existed that a committee might take advantage of section 310(c) only to find that points of order under section 302(f) impeded the progress of its legislation after the reconciliation act.

[440] *See supra* pp. 70-71.

subsection, the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a)[441] and revised functional levels and aggregates to carry out this subsection.

(C) Allocations, functional levels, and aggregates revised pursuant to this paragraph shall be considered to be allocations, functional levels, and aggregates contained in the concurrent resolution on the budget pursuant to section 301.[442]

(D) Upon the filing of revised allocations pursuant to this paragraph, the reporting committee shall report revised allocations pursuant to section 302(b)[443] to carry out this subsection.

(d) LIMITATION OF AMENDMENTS TO RECONCILIATION BILLS AND RESOLUTIONS.[444] --

(1) It shall not be in order in the House of Representatives to consider any amendment to a reconciliation bill or reconciliation resolution[445] if such amendment would have the effect of increasing any specific budget outlays[446]

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[441] *See supra* pp. 70-71.

[442] *See supra* pp. 46-69.

[443] *See supra* pp. 71-73.

[444] Sections 904(c) of the Congressional Budget Act (*see infra* pp. 298-299) and 271(b) of Gramm-Rudman-Hollings (*see infra* p. 591) provide that the Senate may waive or suspend section 310(d) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 608.

Note also the provisions for the suspension of section 310(d) under certain circumstances after the declaration of war or a recession pursuant to section 258 of Gramm-Rudman-Hollings. *See infra* pp. 543-556.

[445] Section 310(b) defines "reconciliation resolution." *See supra* pp. 134-136.

[446] Section 3(1) defines "budget outlays." *See supra* p. 11.

above the level of such outlays provided in the bill or resolution (for the fiscal years covered by the reconciliation instructions set forth in the most recently agreed to concurrent resolution on the budget), or would have the effect of reducing any specific Federal revenues below the level of such revenues provided in the bill or resolution (for such fiscal years), unless such amendment makes at least an equivalent reduction in other specific budget outlays, an equivalent increase in other specific Federal revenues, or an equivalent combination thereof (for such fiscal years), except that a motion to strike a provision providing new budget authority[447] or new entitlement authority[448] may be in order.

(2) It shall not be in order[449] in the Senate to consider any amendment[450] to a reconciliation bill or reconciliation resolution[451] if such amendment would have the effect of decreasing any specific budget outlay[452] reductions below the level of such outlay reductions provided (for the fiscal years covered) in the reconciliation instructions which relate to such bill or resolution set forth in a resolution providing for reconciliation, or would have the effect of reducing Federal revenue increases below the level of such revenue increases provided (for such fiscal years) in such instructions relating to such bill or resolu-

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[447] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[448] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204).

[449] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

[450] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303).

[451] Section 310(b) defines "reconciliation resolution." *See supra* pp. 134-136.

[452] Section 3(1) defines "budget outlays." *See supra* p. 11.

tion, unless such amendment makes a reduction in other specific budget outlays, an increase in other specific Federal revenues, or a combination thereof (for such fiscal years) at least equivalent[453] to any increase in outlays or decrease in revenues provided by such amendment, except that a motion to strike a provision shall always be in order.

(3) Paragraphs (1)[454] and (2)[455] shall not apply if a declaration of war by the Congress[456] is in effect.

(4) For purposes of this section, the levels of budget outlays[457] and Federal revenues for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget[458] of the House of Representatives or of the Senate, as the case may be.

(5) The Committee on Rules of the House of Representatives may make in order amendments to achieve changes specified by reconciliation directives contained in a concurrent resolution on the budget if a committee or committees of the House fail to submit recommended changes to its Committee on the Budget pursuant to its

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[453] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 494 (regarding section 311(a)).

[454] *See supra* pp. 140-141.

[455] *See supra* pp. 141-142.

[456] The Constitution grants Congress the power "[t]o declare War." U.S. CONST. art. I, § 8, cl. 11.

Note also the provisions for the suspension of section 310(d) under certain circumstances after the declaration of war or a recession pursuant to section 258 of Gramm-Rudman-Hollings. *See infra* pp. 543-556.

[457] Section 3(1) defines "budget outlays." *See supra* p. 11.

[458] This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 201(g), *supra* p. 32; section 302(g), *supra* p. 82; section 311(c), *infra* p. 157; section 313(e), *infra* p. 182; and section 258B(h)(4) of Gramm-Rudman-Hollings, *infra* p. 571.

instruction.[459]

(e) PROCEDURE IN THE SENATE. --

(1) Except as provided in paragraph (2),[460] the provisions of section 305[461] for the consideration in the Senate of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration in the Senate of reconciliation bills reported under subsection (b)[462] and conference reports thereon.

(2) Debate in the Senate on any reconciliation bill reported under subsection (b),[463] and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to not more than 20 hours.[464]

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[459] Compare the parallel sanctions for noncompliance in the Senate. *See supra* note 137.

[460] *See infra* p. 143.

[461] *See supra* pp. 95-114.

[462] *See supra* pp. 134-136.

[463] *See supra* pp. 134-136.

[464] In contrast, section 305(b)(1) limits debate on a concurrent resolution on the budget to 50 hours and debate on revisions of a budget resolution to 15 hours. *See supra* pp. 97-98.

(f)[465] COMPLETION OF RECONCILIATION PROCESS. -- It shall not be in order in the House of Representatives[466] to consider any resolution providing for an adjournment period of more than three calendar days during the month of July[467] until the House

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[465] Section 13210(2) of the Budget Enforcement Act amended section 310(f) to repeal the explicit deadline for the completion of reconciliation. *See infra* p. 646. Congress honored the deadline in the breach. *See infra* note 467. Before enactment of the Budget Enforcement Act, section 310(f) read as follows (material that the Budget Enforcement Act deleted appears in ~~strikeout~~ type):

> (f) COMPLETION OF RECONCILIATION PROCESS. --
>
> ~~(1) IN GENERAL. -- Congress shall complete action on any reconciliation bill or reconciliation resolution reported under subsection (b) not later than June 15 of each year.~~
>
> ~~(2) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES.~~ -- It shall not be in order in the House of Representatives to consider any resolution providing for an adjournment period of more than three calendar days during the month of July until the House of Representatives has completed action on the reconciliation legislation for the fiscal year beginning on October 1 of the calendar year to which the adjournment resolution pertains, if reconciliation legislation is required to be reported by the concurrent resolution on the budget for such fiscal year.

By virtue of a mistaken reference, section 904(c) lists section 310(f) (instead of section 310(g)) among the points of order requiring 60 votes to waive in the Senate. As the point of order applies only in the House, the reference makes absolutely no sense. *See infra* note 903.

[466] Compare the parallel point of order in the House in connection with completion of all appropriations legislation in section 309. *See supra* p. 129.

[467] Congress usually takes action on reconciliation bills well after the June deadline, as the following table illustrates. (Note that until the enactment of Gramm-Rudman-Hollings, section 310(d) set forth a September 25 deadline.)

Adoption Dates of Reconciliation Bills

Reconciliation bills	Dates passed by Congress
Omnibus Reconciliation Act of 1980	December 3, 1980 (Pub. L. No. 96-499)
Omnibus Budget Reconciliation Act of 1981	July 31, 1981 (Pub. L. No. 97-35)
Omnibus Budget Reconciliation Act of 1982	August 18, 1982 (Pub. L. No. 97-253)
Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA)	August 19, 1982 (Pub. L. No. 97-248)

(continued...)

of Representatives has completed action on the reconciliation legislation for the fiscal year beginning on October 1 of the calendar year to which the adjournment resolution pertains, if reconciliation legislation is required to be reported by the concurrent resolution on the budget for such fiscal year.

(g) LIMITATION ON CHANGES TO THE SOCIAL SECURITY ACT.[468] -- Notwithstanding any other provision of law, it shall not be in order[469] in the Senate or the House of Representatives to consider any reconciliation bill or reconciliation resolution[470] reported[471] pursuant to a

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[467](...continued)

Omnibus Budget Reconciliation Act of *1983*	April 5, *1984* (H.R. 4169; Pub. L. No. 98-270 (Apr. 18, 1984))
Consolidated Omnibus Budget Reconciliation Act of *1985* (COBRA)	March 20, *1986* (H.R. 3128; Pub. L. No. 99-272 (Apr. 7, 1986))
Omnibus Budget Reconciliation Act of 1986	October 17, 1986 (H.R. 5300; Pub. L. No. 99-509 (Oct. 21, 1986))
Omnibus Budget Reconciliation Act of 1987	December 22, 1987 (H.R. 3545; Pub. L. No. 100-203 (Dec. 22, 1987))
Omnibus Budget Reconciliation Act of 1989	November 22, 1989 (H.R. 3299; Pub. L. No. 101-239 (Dec. 19, 1989))
Omnibus Budget Reconciliation Act of 1990	October 27, 1990 (H.R. 5835; Pub. L. No. 101-508 (Nov. 5, 1990))

[468] Section 271(b) of Gramm-Rudman-Hollings provides that the Senate may waive or suspend section 310(g) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* p. 591. Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 608. Congress intended to provide for this supermajority in section 904(c) of the Congressional Budget Act, but the Budget Enforcement Act mistakenly amended section 904(c) to refer to section 310(f) instead of section 310(g). *See infra* note 903.

[469] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

[470] Section 310(b) defines "reconciliation resolution." *See supra* pp. 134-136.

concurrent resolution on the budget agreed to under section 301[472] or 304,[473] or a joint[474] resolution pursuant to section 258C[475] of the Balanced Budget and Emergency Deficit Control Act of 1985, or any amendment thereto[476] or conference report thereon, that contains recommendations with respect to the old-age, survivors, and disability insurance program established under title II[477] of the Social Security Act.

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[471](...continued)

[471] Because section 310(g) does not contain the words "*as* reported" here, points of order under section 310(g) will apply to reconciliation bills and reconciliation resolutions as amended by amendments against which points of order would lie under section 310(g). *Cf. infra* note 488 (regarding the meaning of "as reported" in section 311(a)).

[472] *See supra* pp. 46-69.

[473] *See supra* pp. 93-94.

[474] So that one could not read this language to apply to simple House resolutions setting forth rules, section 13112(a)(9) of the Budget Enforcement Act added the word "joint" here. *See infra* p. 625.

[475] *See infra* pp. 579-582.

Section 13112(a)(9) of the Budget Enforcement Act changed this reference from "254(b)" to "258C" (*see infra* p. 625) to conform to changes made by other sections of the Budget Enforcement Act. Section 13101(a) of the Budget Enforcement Act (*see infra* p. 617) repealed what used to be section 254(b) of Gramm-Rudman-Hollings, which dealt with special fast-track reconciliation procedures in the Senate to substitute alternative means of deficit reduction for sequestration. Section 13101(g) of the Budget Enforcement Act (*see infra* p. 621) added a new section 258C to Gramm-Rudman-Hollings (*see infra* pp. 579-582) that closely paralleled the old section 254(b). (For the text of what used to be section 254(b), see *infra* note 1613.)

[476] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303).

[477] Title II of the Social Security Act is codified as amended at 42 U.S.C. § § 401-433 (1988).

NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, AND REVENUE LEGISLATION MUST BE WITHIN APPROPRIATE LEVELS

SEC. 311. (a)(1)[478] LEGISLATION SUBJECT TO POINT OF ORDER.[479] -- Except as provided by subsection (b),[480] after the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order[481] in either the House of Representatives or the Senate to consider any bill, joint resolution, amendment,[482] motion, or conference report[483] providing new budget authority[484] for such fiscal year,

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[478] Section 13303(d)(1) of the Budget Enforcement Act redesignated what used to be section 311(a) as section 311(a)(1). *See infra* p. 671.

[479] Sections 904(c) of the Congressional Budget Act (*see infra* pp. 298-299) and 271(b) of Gramm-Rudman-Hollings (*see infra* p. 591) provide that the Senate may waive or suspend section 311(a) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 608.

Note also the provisions for the suspension of section 311(a) under certain circumstances after the declaration of war or a recession pursuant to section 258 of Gramm-Rudman-Hollings. *See infra* pp. 543-556.

[480] Section 311(b) applies what is known as the "Fazio exception," which applies only in the House. *See infra* p. 157.

[481] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

[482] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303).

[483] Section 13207(a)(1)(E)(i) of the Budget Enforcement Act struck the words "bill, resolution, or amendment" here and inserted "bill, joint resolution, amendment, motion, or conference report." *See infra* p. 639.

[484] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

providing new entitlement authority[485] effective during such fiscal year, or reducing revenues for such fiscal year,,[486] if --

(A)[487] the enactment of such bill or resolution as reported;[488]

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[485] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204). For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 609.

[486] Section 13207(a)(1)(E)(ii) of the Budget Enforcement Act struck the words "or any conference report on any such bill or resolution" here, but did not strike the comma at the end of that parenthetical. *See infra* p. 639.

[487] Section 13303(d)(1) of the Budget Enforcement Act redesignated what used to be section 311(a)(1) as section 311(a)(1)(A). *See infra* p. 671.

[488] By virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor. 131 CONG. REC. S8,806 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (inquiry of Sen. Chafee). In other words, no point of order will lie under section 311 even though the bill as amended would cause revenues to fall below the revenue floor, if the bill as reported would not have done so. *See id.* This precedent creates a limited window of applicability for section 311(a): A Senator must raise a point of order against an amendment during the pendency of the amendment, or forever lose the right to question under section 311(a) the deficit-increasing effect of the bill as amended. Note the following series of inquiries by Senator Chafee of the Chair (Senator Humphrey of New Hampshire):

> The PRESIDING OFFICER. This amendment reduces revenues below the level expressed in the second budget resolution, and therefore the point of order is well taken.
>
> Mr. CHAFEE. I ask the Chair if the entire bill before us does not do the same. We just adopted an amendment of the Senator from Pennsylvania that reduced revenues by $25 million. Will the Chair offer his opinion on that situation?
>
> The PRESIDING OFFICER. The bill as reported is revenue neutral for the fiscal year 1985. Therefore, it is not subject to a point of order.
>
> Mr. CHAFEE. Would the President be good enough to explain? We just adopted on the floor an amendment by a voice vote that cost $25 million. Is that de minimis or does that not count? Is that not real dollars?
>
> The PRESIDING OFFICER. That amendment likewise would have been subject to a point of order, but the amendment having been agreed to, the point of order is now moot.
>
> Mr. CHAFEE. But the amendment is now part of the bill. So is the

(continued...)

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[488](...continued)
whole bill not subject to a point of order?

The PRESIDING OFFICER. The Parliamentarian advises the bill is treated on the basis on which it was reported from committee.

Mr. CHAFEE. That is parliamentary jargon that I do not quite understand.

Mr. PACKWOOD. Mr. President, I ask what the Chair is ruling: Is it that first we look at the bill as introduced and since the bill is revenue neutral, it is not subject to a point of order? Each amendment as it comes along may or may not be subject to a point of order, but you do not impute it backward to the bill when it is added. Do I understand the ruling correctly?

The PRESIDING OFFICER. The Senator is correct.

Mr. CHAFEE. That is a bit of ingenuity that I am afraid I have not mastered. Let us take that slowly. You can add innumerable amendments to the bill that cost millions or billions, and if a point of order is not raised to each amendment at the time and is adopted, the whole measure itself, which now involves these billions above any budget limitations that were there, is perfectly all right? Could the Chair lead me through that Alice in Wonderland safely?

The PRESIDING OFFICER. The Senator's analysis is correct.

Mr. CHAFEE. That is the way it works?

The PRESIDING OFFICER. That is what the law says.

Mr. CHAFEE. So the law says you do not pay any attention to the final product.

The PRESIDING OFFICER. The Senator's analysis is correct.

Mr. CHAFEE. Is that what the law says, Mr. President?

The PRESIDING OFFICER. The Chair will read the provision. "The enactment of such bill or resolution as reported." The Chair advises that with respect to points of order in this wise the bill is not affected by amendments.

Mr. CHAFEE. If that is the law I refer the President to Charles Dickens' definition of the law.

Id. (Sen. Chafee refers, respectively, to L. CARROLL (C. DODGSON), ALICE'S ADVENTURES IN WONDERLAND (1865), and to Mr. Bumble's definition in C. DICKENS, OLIVER TWIST ch. 51 (1838).)

(continued...)

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[488](...continued)

Compare the language of section 301(i), *supra* p. 69; section 303(a), *supra* p. 84; section 401(a), *infra* p. 200; section 401(b)(1), *infra* p. 201; section 402(a), *infra* p. 211; which contain the magic words "as reported."

Contrast the language of section 302(c), *supra* p. 73; section 302(f)(2), *supra* p. 76; section 306, *supra* p. 115; and section 310(g), *supra* p. 145; which *do not* contain the magic words "as reported." Under the logic of this precedent, points of order under section 302(f), for example, *will* apply to bills as amended by amendments against which points of order would lie under section 302(f). (For a table comparing the language of points of order, see below in this note.)

In contrast to the ruling of the Chair, the clause of section 311 listing

(1) the enactment of such bill or resolution as reported;

(2) the adoption and enactment of such amendment; or

(3) the enactment of such bill or resolution in the form recommended in such conference report

appears merely to state the Congress's attempt to cover the complete legislative process at all stages on the floor.

The legislative history of section 311 supports the interpretation that points of order apply to bills as amended by amendments that offend the rule. The report of the Senate Committee on Rules and Administration on the Congressional Budget Act makes clear that the drafters of section 311 wanted the point of order to cover bills as reported and *as amended*:

> *Sec. 311.*
>
> After all regular annual bills and resolutions providing new budget authority for a fiscal year have been enacted and, if a reconciliation bill is required to be reported under Section 310(c) such a bill has been enacted, it shall not be in order in either House to consider *any bill or resolution* providing additional new budget authority for such fiscal year, any amendment to any such bill or resolution or any conference report thereon if the enactment of the bill or resolution *as reported, as amended or as recommended in the conference report* would cause the appropriate levels of new budget authority or total outlays, as set forth in the budget resolution then in effect, to be exceeded.
>
> In recent years supplemental and, to a lesser extent, deficiency appropriations have been of such magnitude as to have serious impact on the Federal spending picture. In addition, the spending needs being met with supplemental appropriations are most often unanticipated at the time the regular appropriations are being considered and enacted. For these reasons it is considered necessary to require that *any measure* providing new budget authority for a fiscal year *after* the budget process for such year has been completed shall be within the appropriate levels set forth in the then-effective

(continued...)

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[488](...continued)
budget resolution.

S. Rep. No. 93-688, 93d Cong., 2d Sess. 53-54 (1973) (some emphasis added).

The report of the Senate Committee on Government Operations for the Budget Act used the broad term *any measure*:

> Once the budget process for a fiscal year has been completed and appropriations have been effected by a triggering provision described, it shall not be in order to consider *any measure* providing new budget authority for such fiscal year or any conference report thereon if the result of such a measure would be to cause the limitations on new budget authority or on total outlays then in effect to be exceeded.
>
> In recent years supplemental and, to a lesser extent, deficiency appropriations have been of such magnitude as to have serious impact on the Federal spending picture. In addition, the spending needs being met with supplemental appropriations are most often unanticipated at the time the regular appropriations are being considered and enacted. For these reasons the Committee believes it necessary to require that *any measure* providing new budget authority for a fiscal year *after* the budget process for such year has been completed shall be within the limitations set forth in the then-effective budget resolution.

S. Rep. No. 93-579, 93d Cong., 1st Sess. 55 (1973) (some emphasis added).

The conference report for the Budget Act spoke in the general terms *legislation* and *measures*:

> The Senate amendment provided that after adoption of all regular appropriations and a required reconciliation bill, Congress could not consider budget authority *legislation* in excess of the appropriate levels in the most recent concurrent resolution.
>
> The conference substitute provides that after adoption of the second concurrent resolution and completion of the reconciliation process, it shall not be in order to consider any new budget authority or entitlement *measure* that would cause the appropriate level of total budget authority or outlays in the most recent budget concurrent resolution to be exceeded. Nor would it be in order to consider a *measure* that would reduce total revenues below the appropriate levels in the budget resolution.

S. Conf. Rep. No. 93-924, 93d Cong., 2d Sess. 64 (1974) (emphasis added).

Similarly, the conference report for Gramm-Rudman-Hollings, which added the language of the maximum deficit amount point of order, spoke of a point of order that covered *legislation*, using that general term:

> *(a) Legislation Subject to Point of Order.* -- This subsection prohibits consideration in the House or the Senate of *legislation* providing budget authority or

(continued...)

> [488] (...continued)
> entitlement authority, or reducing revenues for the fiscal year to which the most recently agreed to budget resolution applies if enactment of such *legislation* would cause the totals for such authorities, or for revenues, or the total for budget outlays set forth in such budget resolution to be breached. A point of order also lies in the Senate against *legislation* that would cause the maximum deficit amount to be exceeded.

H.R. Conf. Rep. No. 99-433, 99th Cong., 2d Sess. 110 (1985) (some emphasis added).

Thus the legislative history contemplates a point of order against any legislation or measure that offends the rule. No provision seems to have been made requiring the point of order to lie only at certain points along the way.

Note also that the Chair's interpretation of the words "as reported" results in another anomaly. Even though the precedent causes a point of order not to lie against a bill amended by an amendment that offends section 311, the terms of section 311 apply to conference reports. Consequently, a point of order would lie against a conference report that contained nothing in substance other than an amended bill that would not be subject to a point of order.

The drafters of the Congressional Budget Act worded its points of order inconsistently, creating anomalies and perhaps loopholes. The table below illustrates the types of legislation covered by points of order:

APPLICABILITY OF POINTS OF ORDER
TO TYPES OF LEGISLATION

Point of Order	Bills		Resolutions	
	As Reported	All	As Reported	All
301(i)	-	-	X	-
301(g)	-	-	X	X
302(c)	X	X	X	X
302(f)	X	X	X	X
303(a)	X	-	X	-
304(b)	-	-	X	X
305(d)	-	-	X	-
306	X	X	X	X
310(e)	X	X	-	-
310(g)	X	X	X	X
311(a)	X	-	X	-
401(a)	X	-	X	-
401(b)	X	-	X	-
402(a)	X	-	X	-

(B)[489] the adoption and enactment of such amendment; or

(C)[490] the enactment of such bill or resolution in the form recommended in such conference report,

would cause the appropriate level of total budget authority[491] or total budget outlays[492] set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, or would cause revenues[493] to be less than the appropriate level[494] of total revenues set forth in such concurrent resolution[495] except in the case that a declaration of war by the

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[489] Section 13303(d)(1) of the Budget Enforcement Act redesignated what used to be section 311(a)(2) as section 311(a)(1)(B). *See infra* p. 671.

[490] Section 13303(d)(1) of the Budget Enforcement Act redesignated what used to be section 311(a)(3) as section 311(a)(1)(C). *See infra* p. 671.

[491] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[492] Section 3(1) defines "budget outlays." *See supra* p. 11.

[493] *E.g.*, 131 CONG. REC. S8,806-07 (1985); Senate Precedent PRL19850626-001 (June 26, 1985) (LEGIS, Rules database) (point of order raised by Sen. Packwood).

If the current level is below the revenue floor for a fiscal year, legislation that would result in a loss of revenues for that year would violate section 311. 131 CONG. REC. S6,367-68 (1985); Senate Precedent PRL19850516-001 (May 16, 1985) (LEGIS, Rules database) (inquiry of Sen. Metzenbaum).

[494] The Congressional Budget Act makes no exception for very small amounts; even a "negligible" revenue loss can subject legislation to a point of order under section 311(a). 122 CONG. REC. S17,709-10 (1976); Senate Precedent PRL19761001-001 (Oct. 1, 1976) (LEGIS, Rules database) (point of order by Sen. Haskell).

[495] Section 13112(a)(10) of the Budget Enforcement Act struck the balance of what used to be section 311(a) from this point on and inserted "except in the case that a declaration of war by the Congress is in effect." *See infra* p. 625. The last clause of the material stricken by the Budget Enforcement Act contained an exception for wartime.

Before enactment of the Budget Enforcement Act, the balance of section 311(a) read as follows:

> or, in the Senate, would otherwise result in a deficit for such fiscal year that -- /

(continued...)

Congress is in effect.

(2)(A)[496] After the Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would cause the appropriate level of total new budget authority[497] or total budget outlays or social security outlays[498] set forth for the first fiscal year in the most recently agreed to concurrent resolution on the budget covering such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues (or social security revenues to be less than the appropriate level of social security revenues[499]) set forth for the first fiscal year covered by

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[495](...continued)

> (A) for fiscal year 1989 or any subsequent fiscal year, exceeds the maximum deficit amount specified for such fiscal year in section 3(7); and
>
> (B) for fiscal year 1988 or 1989, exceeds the amount of the estimated deficit for such fiscal year based on laws and regulations in effect on January 1 of the calendar year in which such fiscal year begins as measured using the budget baseline specified in section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 minus $23,000,000,000 for fiscal year 1988 or $36,000,000,000 for fiscal year 1989;
>
> except to the extent that paragraph (1) of section 301(i) or section 304(b), as the case may be, does not apply by reason of paragraph (2) of such subsection.

The Congressional Budget Act now addresses this material, sometimes called the "maximum deficit amount point of order" or "MDA point of order," in section 605(b). *See infra* p. 271.

[496] Section 13303(d)(2) of the Budget Enforcement Act added paragraph (2). *See infra* p. 671.

[497] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[498] Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 132.

[499] Section 301(a)(7) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." *See supra* note 134.

the resolution and for the period including the first fiscal year plus the following 4 fiscal years in such concurrent resolution.

(B) In applying this paragraph --

(i)(I) estimated social security outlays[500] shall be deemed to be reduced by the excess of estimated social security revenues[501] (including those provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) over the appropriate level of Social Security revenues specified in the most recently agreed to concurrent resolution on the budget;

(II) estimated social security revenues shall be deemed to be increased to the extent that estimated social security outlays are less (taking into account the effect of the bill, resolution, amendment, or conference report to which this subsection is being applied) than the appropriate level of social security outlays in the most recently agreed to concurrent resolution on the budget; and

(ii)(I) estimated Social Security outlays shall be deemed to be increased by the shortfall of estimated social security revenues (including Social Security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) below the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget; and

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[500] Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 132.

[501] Section 301(a)(7) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." *See supra* note 134.

(II) estimated social security revenues[502] shall be deemed to be reduced by the excess of estimated social security outlays[503] (including social security outlays provided for in the bill, resolution, amendment, or conference report with respect to which this subsection is applied) above the appropriate level of social security outlays specified in the most recently adopted concurrent resolution on the budget; and

(iii) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

The chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a)[504] and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to section 302(b).[505]

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[502] Section 301(a)(7) implicitly defines the term "social security revenues" as "revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986)." *See supra* note 134.

[503] Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 132.

[504] *See supra* pp. 70-71.

[505] *See supra* pp. 71-73.

(b) EXCEPTION IN THE HOUSE OF REPRESENTATIVES.[506] -- Subsection (a)[507] shall not apply in the House of Representatives to any bill, resolution, or amendment which provides new budget authority[508] or new entitlement authority[509] effective during such fiscal year, or to any conference report on any such bill or resolution, if --

(1) the enactment of such bill or resolution as reported;

(2) the adoption and enactment of such amendment; or

(3) the enactment of such bill or resolution in the form recommended in such conference report,

would not cause the appropriate allocation of new discretionary budget authority[510] or new entitlement authority made pursuant to section 302(a)[511] for such fiscal year, for the committee within whose jurisdiction such bill, resolution, or amendment falls, to be exceeded.

(c) DETERMINATION OF BUDGET LEVELS. -- For purposes of this section, the levels of new budget authority,[512] budget outlays,[513] new entitlement authority,[514] and revenues for a fiscal

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[506] This subsection provides what some call the "Fazio exception."

[507] *See supra* pp. 147-156.

[508] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[509] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204).

[510] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[511] *See supra* pp. 70-71.

[512] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[513] Section 3(1) defines "budget outlays." *See supra* p. 11.

year shall be determined on the basis of estimates made by the Committee on the Budget[515] of the House of Representatives or of the Senate, as the case may be.

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[514](...continued)

[514] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204).

[515] This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 201(g), *supra* p. 32; section 302(g), *supra* p. 82; section 310(d)(4), *supra* p. 142; section 313(e), *infra* p. 182; and section 258B(h)(4) of Gramm-Rudman-Hollings, *infra* p. 571.

EFFECTS OF POINTS OF ORDER

SEC. 312.[516] [(a)][517] POINTS OF ORDER IN THE SENATE AGAINST AMENDMENTS BETWEEN THE HOUSES. -- Each provision of this Act that establishes a point of order against an amendment also establishes a point of order in the Senate against an amendment between the Houses. If a point of order under this Act is raised in the Senate against an amendment between the Houses, and the Presiding Officer sustains the point of order, the effect shall be the same as if the Senate had disagreed to the amendment.[518]

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[516] Section 13207(b)(1) of the Budget Enforcement Act added section 312. *See infra* p. 640.

[517] The original lacks this initial letter, but the presence of subsection (b) below makes it apparent that this should be "(a)."

[518] Section 13207(b)(1) of the Budget Enforcement Act added section 312(a). *See infra* p. 640. The statement of managers accompanying the conference report on the Budget Enforcement Act explains subsection (a) briefly: "The conference agreement . . . corrects a precedent in the Senate that effectively kills amendments between Houses if points of order under the Congressional Budget Act are sustained against them (see Senate Precedent PRL19860313-003 (Mar. 13, 1986) (LEGIS, Rules database)) . . . ." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,170 (1990).

The precedent to which the managers referred reflects the ruling of the chair on a point of order on March 13, 1986. On that date, the Presiding Officer correctly ruled that points of order under the Congressional Budget Act apply to amendments between the Houses, as they apply by their terms to "amendments." The Presiding Officer went on to advise, however, that the effect of sustaining such a point of order is that the amendment of the House is no longer before the Senate, but retains its status as a House message at the desk. This result would effectively stop any further action on the bill. The Parliamentarian's notation of the precedent appears as follows:

SENATE PRECEDENT PRL19860313-003

CALENDAR DATE = 1986-03-13

HEADNOTE(S)

If the concurrent resolution on the budget for a fiscal year has been adopted, a point of order will lie against an amendment of the House to an amendment of the Senate to an appropriations bill, if that amendment increases outlays at a time when the appropriate level of outlays for that

(continued...)

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[518](...continued)

fiscal year has been breached, and the effect of sustaining such a point of order is that the amendment of the House is no longer before the Senate, but retains its status as a House message at the desk.

STATEMENT OF FACT

On March 13, 1986, the Senate was considering the conference report in disagreement on H.J.Res. 534, making urgent supplemental appropriations for the Department of Agriculture (relative to the Commodity Credit Corporation), which was accompanied by an amendment of the House to the amendment of the Senate reported in disagreement. The Senator from Texas (Mr. Gramm) moved to waive section 311 of the Budget Act of 1974, as amended by the Balanced Budget and Emergency Deficit Control Act of 1985 (the Gramm-Rudman-Hollings Act), and after that motion was defeated and the conference report agreed to, the following occurred:

> Mr. GRAMM. Mr. President, I raise a point of order under section 311, as amended by the Balanced Budget and Emergency Deficit Control Act, that the amendment of the House to the amendment of the Senate will exceed the appropriate level of budget authority and outlays set forth in the concurrent resolution on the budget for fiscal year 1986 and, therefore, is not in order.
>
> The PRESIDING OFFICER (Mr. Trible of Virginia). The point of order is well taken.

Mr. Cochran of Mississippi appealed the ruling of the chair, and Mr. Domenici of New Mexico successfully moved to table that appeal, 61 yeas, 33 nays.

Shortly thereafter, the majority leader (Mr. Dole of Kansas) made the following inquiry which, with the response of the Chair (Mr. Pressler of South Dakota), is as follows:

> Mr. DOLE. Mr. President, a parliamentary inquiry. What is the status of the conference report?
>
> The PRESIDING OFFICER. The conference report was agreed to. The House message is no longer before the Senate.

CONGRESSIONAL RECORD : (99-2) pp. S 2642-56.

PARLIAMENTARIAN'S NOTE(S)

Since the point of order under section 311 of the Budget Act precluded consideration of the House amendment, it was not construed to "kill" the amendment (the Senate not having the authority to negate the action of the House in adopting it), but simply to prevent Senate consideration.

(continued...)

(b) EFFECT OF A POINT OF ORDER ON A BILL IN THE SENATE. -- In the Senate, if the Chair sustains a point of order under this Act against a bill, the Chair shall then send the bill to the committee of appropriate jurisdiction for further consideration.[519]

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[518](...continued)

> Consequently, the message was not interpreted as having been "considered" and therefore could not be sent back to the House. The only status it could have was that it be back at the desk where it was before the Senate attempted to consider it.

Senate Precedent PRL19860313-003 (Mar. 13, 1986) (LEGIS, Rules database).

Under this precedent, at least in cases where there was only one amendment in disagreement, the amendment would remain at the desk and it would not be in order for the Senate to consider it. The Senate would then be powerless to complete action on the vehicle received from the House because it could not act on the piece remaining at the desk. This led to the perverse result that a point of order raised against an amendment (and an amendment only) resulted in effectively killing the entire measure. This result is contrary to the intent of the drafters of the Congressional Budget Act, who wanted to make points of order available in an effective manner to address violations. The result dictated by this precedent, however, renders the point of order of limited value: A Senator would only raise it when the Senator opposed the entire bill, and a Senator would feel constrained not to raise the point of order against an offending provision -- even if the Senator opposed the provision -- if the Senator valued the passage of the bill as a whole.

Section 312(a) remedies this anomaly by setting forth a new rule: If a point of order against an amendment between the Houses is raised and sustained, then the effect will be the same as if the Senate had disagreed with the amendment. The Senate will then be able to work its will on the balance of the bill and send the measure back to the House.

[519] Section 13207(b)(1) of the Budget Enforcement Act added section 312(b). *See infra* p. 640. The statement of managers accompanying the conference report on the Budget Enforcement Act explains subsection (b) briefly: "The conference agreement . . . makes clear that if a point of order under the Act is sustained against a bill, the bill should be sent back to committee instead of the calendar, so that the committee may then take corrective action to improve the bill." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,170 (1990).

EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION[520]

SEC. 313.[521] (a) IN GENERAL.[522] -- When the Senate is considering a reconciliation bill or a reconciliation resolution[523] pursuant to section 310,[524] (whether that bill or resolution originated in the Senate or the House[525]) or section 258C[526] of

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[520] Section 13214(b)(2)(A) of the Budget Enforcement Act added the heading here. *See infra* p. 656.

[521] This section is often called "the Byrd Rule," after its principal sponsor, Senator Robert C. Byrd of West Virginia.

Section 13214(b)(1) of the Budget Enforcement Act (*see infra* p. 656) transferred this section here from section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, § 20001, 100 Stat. 82, 390-91 (Apr. 7, 1986), *as amended by* the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, § 7006, 100 Stat. 1874, 1949-1950 (Oct. 21, 1986), *and as amended by* the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 205, 101 Stat. 754, 784-85 (Sept. 29, 1987). For legislative history of this section, see *infra* note 575 (at the end of the section).

[522] Section 13214(a)(1)(A) of the Budget Enforcement Act inserted the heading "IN GENERAL. --" here. *See infra* p. 655.

[523] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 134-136.

[524] *See supra* pp. 130-146.

[525] Section 13214(a)(1)(B) of the Budget Enforcement Act inserted the parenthetical "(whether that bill or resolution originated in the Senate or the House)." *See infra* p. 655.

The Budget Enforcement Act language codifies the understanding of the law held by the Chairman of the Budget Committee (that this rule applies to reconciliation bills or reconciliation resolutions passed by the House when the Senate considers them) as expressed in the debate of October 4, 1989:

RECONCILIATION QUESTIONS

> Mr. SASSER. Mr. President. The distinguished Republican leader gave notice yesterday of his intent to propound four parliamentary inquiries of the Chair regarding the reconciliation process pursuant to the Congressional Budget Act of 1974. I rise today to address these inquiries from the perspective of the Committee on the Budget.

(continued...)

the Balanced Budget and Emergency Deficit Control Act of 1985 upon a point of order[527] being made by any Senator against material extraneous to the instructions to a committee which is contained in any title or provision of the bill or resolution or offered as an

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[525](...continued)

> . . . .
>
> Mr. President, the distinguished Republican Leader asked a second question, and it was this:
>
> "Can the Byrd rule, the extraneous rule, be used to attack the House language on capital gains?" That was the question.
>
> We in the Committee on the Budget would submit that the answer to that is yes. The Byrd rule, by its term[s], applies to a "reconciliation bill." If the Senate were to take up the House-reported reconciliation bill, it would be considering a "reconciliation bill" pursuant to the Byrd rule.
>
> The procedures regarding reconciliation would apply, including that debate would be limited to 20 hours, that no amendment that is not germane would be received, and that the bill would be out of order if it proposed changes in Social Security.
>
> Likewise, the Byrd rule on what is extraneous would apply. Otherwise, the Senate would be forced to take up a measure to which the Senate's own rules would not apply. Clearly, a gigantic loophole would be created and the result would be unacceptable, in that the Senate's own rules could not be used to determine its actions.
>
> Mr. President, what is the effect of a Byrd rule point of order against a provision in the House bill? The text of Senate Resolution 509 from the second session of the 99th Congress, I think, provides some guidance. The effect would be just the same as if the Senate had adopted an amendment striking the offending provision. This is, after all, the effect of the Byrd rule on provisions of Senate reported reconciliation bills.

135 CONG. REC. S12,589 (Oct. 4, 1989) (statement of Budget Committee Chairman Sasser). (The Republican leader never propounded of the Chair the inquiries that he said he would.) The Budget Enforcement Act incorporated the Senate Resolution to which the Chairman referred as the second subsection (c) to this section. *See infra* pp. 173-174.

[526] *See infra* pp. 579-582. Section 258C provides for a special fast-tract reconciliation procedure as a substitute for sequestration. Section 13214(a)(1)(B) of the Budget Enforcement Act inserted the reference "or section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985." *See infra* p. 655.

[527] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

amendment to the bill or resolution,[528] and the point of order is sustained by the Chair, any part[529] of said title or provision

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[528] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303).

[529] During the debate on the amendment that would later become section 313, Senator Johnston asked the principal sponsor, Senator Byrd, what "part" meant:

> Mr. JOHNSTON. Mr. President, will the Senator yield for a question?
>
> Mr. BYRD. I yield.
>
> Mr. JOHNSTON. I say I support very strongly what the Senator is trying to do, but for purpose of setting the legislative record, I would like to get an understanding what happens in some instances.
>
> First of all, according to the amendment when a matter is not within the jurisdiction of the committee or is extraneous to the instructions, that matter shall be deemed stricken from the bill. Now the question is: Where you have a whole provision, some of which is germane and some of which is not, does the Parliamentarian go through that and excise those sentences or clauses or subsections which are nongermane or extraneous and leave the rest, or does he excise the entire section as to which there is offending language?
>
> Mr. BYRD. I am not sure I can answer that question with respect to what the Parliamentarian will do.
>
> It might depend upon whether or not the language is divisible. I do not know. Perhaps the distinguished Senator would want to address his question to the Chair on this particular question.
>
> Mr. JOHNSTON. When it says, "Any part of a bill not in the jurisdiction of the committee," I am just wondering what the intent of the authors is with respect to "any part of a bill." Does it mean the entire portion of the bill reported by a committee, or just as the offending extraneous or nongermane language?
>
> Mr. BYRD. If it is any part of the bill that is not within the jurisdiction of the reporting committee, it would fall. If it is not within the jurisdiction of the -- --
>
> Mr. JOHNSTON. When you say "part," if you have, let us say, a 30-page section of legislation as to which there is one subsection that is not germane, would you simply knock out the subsection or would you take the whole 30-page section?
>
> Mr. BYRD. I think the Senator may be confusing -- let me say this:

(continued...)

that contains material extraneous to the instructions to said Committee as defined in subsection (b)[530] shall be deemed stricken from the bill and may not be offered as an amendment from the floor.[531]

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[529](...continued)
the Senator is talking about germaneness?

Mr. JOHNSTON. The Senator is correct.

Mr. BYRD. And also talking about legislation that has been reported by a committee which does not have jurisdiction over the subject matter. So there are two different things.

The language, I think, would explain the answer. Any part of the bill not in the jurisdiction of the reporting committee, whether it is germane or not, any part that is not within the jurisdiction of the reporting committee, would fall.

Mr. JOHNSTON. For example, we usually put a severability clause in legislation which means that if any section of the bill is declared unconstitutional by the Court, then the rest of the bill does not fall.

I am asking, I guess, whether you intend for there to be, in effect, a severability clause here, or whether the whole section as to which there is any offending language falls.

Mr. BYRD. I say any part of the bill that is not within the jurisdiction of the reporting committee would fall.

Mr. JOHNSTON. You can take out that part and in effect rewrite the bill by striking sentences, clauses, subsections.

Mr. BYRD. That are not within the jurisdiction of the reporting committee.

131 CONG. REC. S14,034 (Oct. 24, 1985).

[530] *See infra* pp. 166-183. Section 13214(b)(4)(B) of the Budget Enforcement Act (*see infra* p. 657) changed this reference from (d) to (b) to conform with the redesignation of subsection (d) as subsection (b) made by section 13214(b)(2)(C) of the Budget Enforcement Act. *See infra* p. 656.

[531] Section 13214(b)(2)(B) of the Budget Enforcement Act (*see infra* p. 656) repealed what used to be the last sentence of subsection (a), which read as follows:

> An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section, as well as to waive or suspend the provisions of this subsection.

(continued...)

(b)[532] EXTRANEOUS PROVISIONS.[533] -- (1)(A) Except as provided

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[531] (...continued)

Section 904(d) supersedes this sentence by listing sections 313 and 904(d) among those sections for which 60 Senators must vote affirmatively to sustain an appeal. *See infra* p. 302.

[532] Section 13214(b)(2)(C) of the Budget Enforcement Act redesignated as subsection (b) what used to be subsection (d). *See infra* p. 656. Section 13214(b)(2)(B) of the Budget Enforcement Act (*see infra* p. 656) repealed what used to be subsection (b), which read as follows:

> (b) No motion to waive or suspend the requirement of section 305(b)(2) of the Congressional Budget Act of 1974, as it relates to germaneness with respect to a reconciliation bill or resolution, shall be agreed to unless supported by an affirmative vote of three-fifths of the Members, duly chosen and sworn, which super-majority shall be required to successfully appeal the ruling of the Chair on a point of order raised under that section, as well as to waive or suspend the provisions of this subsection.

Section 904(c) supersedes this old subsection (b) by listing sections 313 and 904(c) among those sections requiring 60 Senators to waive. *See infra* p. 298. For an example of a motion to waive this section see, e.g., 132 CONG. REC. S13,047 (Sept. 19, 1986).

[533] Section 13214(a)(2) of the Budget Enforcement Act inserted the heading "EXTRANEOUS PROVISIONS. --" here. *See infra* p. 655.

During the debate on the amendment that would later become section 313, Senator Johnston asked the principal sponsor, Senator Byrd, what "extraneous" meant:

> Mr. JOHNSTON. My final question has to do with the meaning of the word "extraneous" and what your intention is as to how that is interpreted. Frequently, in fact, usually directions are given by the Budget Committee in the very broadest of terms, and the authorizing committees report legislation which is detailed and which, in one sense, might contain matter that is extraneous. It might be germane to the instructions, but extraneous in the sense that it is not specifically called for within the four corners of the instructions from the Budget Committee to the authorizing committee. Could the Senator tell me what he means by "extraneous" in this context of that question?
>
> . . . .
>
> Mr. JOHNSTON. If I may repeat it. The question is as to the meaning of the word "extraneous," as used in this amendment. . . .
>
> . . . . But the question is: What is the meaning of the word "extraneous"? Do you mean that it must be contained within the four corners of the instructions from the Budget Committee, or may the Budget Committee

(continued...)

in paragraph (2),[534] a provision of a reconciliation bill or

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[533] (...continued)
supplement those instructions by filling out the spirit of the instructions within the jurisdiction of that committee and all within the germaneness rule, if the Senator understands the question?

> Mr. BYRD. The word "extraneous" here would be interpreted in the future just as it is presently being interpreted. And I understand that, at the present time, "extraneous," in the context, is determined by whether or not the language contributes to reducing the deficit and balancing the budget; otherwise, it is extraneous. So the same interpretation that is now given to the word "extraneous" would continue to be given.
>
> Mr. JOHNSTON. So, for example, a committee would be able to go beyond the instructions and save more money?
>
> Mr. BYRD. Well, if such language does not serve to balance the budget or to reduce the deficit, the language would be extraneous -- then it would be up to the Chair to determine whether or not the point of order is well taken.
>
> . . . .
>
> Mr. DOMENICI. Mr. President, will the distinguished minority leader [Senator Byrd] permit me to respond to what "extraneousness" means thus far in its evolution in the Senate? Let me suggest that, going back to 1981, we have evolved these four definitions, and I believe they are used by minority and majority members of the committee now. I would just read them quickly:
>
> > One, provisions that have no direct effect on spending and which are not essential to achieving the savings.
> >
> > Two, provisions which increase spending and are not so closely related to saving provisions that they cannot be separated.
> >
> > Three, provisions which extend authorizations without saving money, and which are not so closely related to saving provisions that they cannot be separated.
> >
> > Four, provisions which invade another committee's jurisdiction, whether or not they save money.
>
> And I am not saying that is all inclusive, but, up to this point, that is what we have been using. . . .

131 CONG. REC. S14,034-35 (Oct. 24, 1985).

[534] *See infra* pp. 170-171.

reconciliation resolution[535] considered pursuant to section 310[536] shall be considered extraneous if such provision does not produce a change in outlays[537] or revenues, including changes in outlays and revenues brought about by changes in the terms and conditions under which outlays are made or revenues are required to be collected (but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph);[538]

(B) any provision producing an increase in outlays[539] or decrease in revenues shall be considered extraneous if the net effect of provisions reported by the Committee reporting the title containing the provision is that the Committee fails to achieve its reconciliation instructions;[540]

(C) a provision that is not in the jurisdiction of the Committee with jurisdiction over said title or provision shall be considered extraneous;[541]

(D) a provision shall be considered extraneous if it pro-

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[535] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 134-136.

[536] *See supra* pp. 130-146.

[537] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 11.

[538] Section 13214(a)(3) of the Budget Enforcement Act inserted the parenthetical "(but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph)." *See infra* p. 655.

[539] *See, e.g.*, 132 CONG. REC. S13,047 (1986); Senate Precedent PRL19860919-008 (Sept. 19, 1986) (LEGIS, Rules database).

Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 11.

[540] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. infra* note 494 (regarding section 311(a)).

[541] Subsection (b)(3) provides exceptions to this paragraph. *See infra* pp. 172-183.

duces changes in outlays[542] or revenues which are merely incidental to the non-budgetary components of the provision;

(E)[543] a provision shall be considered to be extraneous if it

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[542] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 11.

[543] Section 205(b) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 added subparagraph (E). Pub. L. No. 100-119, § 205(b), 101 Stat. 754, 784-85 (Sept. 29, 1987). The joint statement of managers accompanying the conference report on that bill stated with regard to subparagraph (E):

> 6. Extraneous Provisions in Reconciliation Legislation
>
> *Current Law*
>
> Title XX of the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272), as amended by Section 7006 of the Omnibus Budget Reconciliation Act of 1986 (P.L. 99-509), established a temporary rule in the Senate -- referred to as the "Byrd Rule" -- to exclude extraneous matter from reconciliation legislation. The rule specifies the types of provisions considered to be extraneous, provides for a point of order against the inclusion of extraneous matter in reconciliation measures, and requires a three-fifths vote of the Senate to waive or appeal the point of order. The rule expires on January 2, 1988.
>
> *Senate Amendment*
>
> The Senate amendment (Section 228) amends the Byrd Rule (which applies only in the Senate) to include in the definition of extraneous matter provisions which increase net outlays or decrease revenues during a fiscal year beyond those fiscal years covered by the reconciliation measure and which result in a net increase in the deficit for that fiscal year. The Senate amendment also extends the expiration date of the Byrd Rule to September 30, 1992.
>
> *Conference Agreement*
>
> The House recedes and concurs in the Senate amendment. This rule applies only in the Senate.
>
> It is the intent of the conferees that expiration after the reconciliation period of a revenue increase or extension provided for in a reconciliation bill would not, of itself, be considered a revenue decrease for purposes of this provision. It could, however, contribute to a finding that a spending increase or a positive revenue decrease in that legislation violated this rule.

H.R. CONF. REP. No. 100-313, 100th Cong., 1st Sess. 65 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 739, 765.

increases, or would increase, net outlays,[544] or if it decreases, or would decrease, revenues during a fiscal year after the fiscal years covered by such reconciliation bill or reconciliation resolution,[545] and such increases or decreases are greater[546] than outlay reductions or revenue increases resulting from other provisions in such title in such year; and

(F)[547] a provision shall be considered extraneous if it violates section 310(g).[548]

(2) A Senate-originated[549] provision shall not be considered extraneous under paragraph (1)(A)[550] if the Chairman and Ranking Minority Member of the Committee on the Budget and the Chairman and Ranking Minority Member of the Committee which reported the provision certify that:

(A) the provision mitigates direct effects clearly attributable to a provision changing outlays[551] or revenues and both provisions together produce a net reduction in

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[544] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 11.

[545] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 134-136.

[546] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. supra* note 494 (regarding section 311(a)).

[547] Section 13214(a)(6) of the Budget Enforcement Act added subparagraph (F). *See infra* p. 656. As a result of this addition, a Senator may raise a point of order under this section that would result in excising only the offending provision, whereas raising the point of order under section 310(g) itself against a provision in the bill would result in killing the entire bill.

[548] *See supra* p. 145.

[549] Section 13214(a)(7) of the Budget Enforcement Act added the words "Senate-originated." *See infra* p. 656. For House-originated provisions, this paragraph did not clearly indicate which chairmen held responsibility. This change makes clear that the exception does not apply for House-originated provisions.

[550] Paragraph (1)(A) concerns provisions without deficit affect. *See supra* p. 166.

[551] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 11.

the deficit;[552]

(B) the provision will result in a substantial reduction in outlays[553] or a substantial increase in revenues during fiscal years after the fiscal years covered by the reconciliation bill or reconciliation resolution;[554]

(C) a reduction of outlays[555] or an increase in revenues is likely to occur as a result of the provision, in the event of

> **new regulation authorized by the provision or likely to be proposed,**
>
> **court rulings on pending litigation, or**
>
> **relationships between economic indices and stipulated statutory triggers pertaining to the provision,**

other than the regulations, court rulings or relationships currently projected by the Congressional Budget Office for scorekeeping purposes; or[556]

(D) such provision will be likely to produce a significant reduction in outlays[557] or increase in revenues but, due to insufficient data, such reduction or increase cannot be reliable estimated.

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[552] Section 3(6) of the Congressional Budget Act defines "deficit." *See supra* p. 16.

[553] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 11.

[554] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 134-136.

[555] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 11.

[556] Section 13214(b)(4)(C) of the Budget Enforcement Act added the conjunction "or" here. *See infra* p. 657. This is how this section had been understood prior to the enactment of the Budget Enforcement Act.

[557] Section 3(1) of the Congressional Budget Act defines "outlays." *See supra* p. 11.

(3) A provision reported by a committee shall not be considered extraneous under paragraph (1)(C)[558] if

(A) the provision is an integral part of a provision or title, which if introduced as a bill or resolution would be referred to such committee, and the provision sets forth the procedure to carry out or implement the substantive provisions that were reported and which fall within the jurisdiction of such committee; or

(B) the provision states an exception to, or a special application of, the general provision or title of which it is a part and such general provision or title of which it is a part and such general provision or title if introduced as a bill or resolution would be referred to such committee.

(c)[559] EXTRANEOUS MATERIALS. -- Upon the reporting or discharge of a reconciliation bill or resolution pursuant to section 310 in the Senate, and again upon the submission of a conference report on such a reconciliation bill or resolution, the Committee on the Budget of the Senate shall submit for the record a list of material considered to be extraneous under subsections (b)(1)(A), (b)(1)(B), and (b)(1)(E) of this section to the instructions of a committee as provided in this section. The inclusion or exclusion of a provision shall not constitute a determination of extraneousness by the Presiding Officer of

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[558] *See supra* p. 168.

[559] Note that there are two subsections (c), here and *infra* pp. 173-174. The Budget Enforcement Act added both at the end of what used to be the Byrd Rule.

Section 13214(a)(8) of the Budget Enforcement Act added this subsection (*see infra* p. 656) and section 13214(b)(2)(C) of the Budget Enforcement Act redesignated it as subsection (c). *See infra* p. 656. Section 13214(b)(2)(B) of the Budget Enforcement Act (*see infra* p. 656) repealed what used to be subsection (c), which read as follows:

> (c) This section shall become effective on the date of enactment of this title and shall remain in effect until September 30, 1992.

By virtue of this repeal of the expiration provision, the Byrd Rule is permanent law.

the Senate.

(c)[560] When the Senate is considering a conference report on, or an amendment between the Houses in relation to, a reconciliation bill or reconciliation resolution[561] pursuant to section 310,[562] upon --

> **(1) a point of order being made by any Senator against extraneous material meeting the definition of subsections (b)(1)(A),[563] (b)(1)(B),[564] (b)(1)(D),[565] (b)(1)(E),[566] or (b)(1)(F),[567] and**

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[560] Note that there are two subsections (c), here and *supra* p. 172. The Budget Enforcement Act added both at the end of what used to be the Byrd Rule. Section 13214(b)(3) of the Budget Enforcement Act transferred this subsection from Senate Resolution 286 (99th Congress, 1st Session), as amended by Senate Resolution 509 (99th Congress, 2d Session) *See infra* p. 657. For the history of these Senate Resolutions, see *infra* note 174. Section 13214(b)(2)(B) of the Budget Enforcement Act (*see infra* p. 656) repealed what used to be subsection (c), which read as follows:

> (c) This section shall become effective on the date of enactment of this title and shall remain in effect until September 30, 1992.

The Byrd Rule is thus permanent law.

[561] Section 310(b) of the Congressional Budget Act defines "reconciliation resolution." *See supra* pp. 134-136.

[562] *See supra* pp. 130-146.

[563] Subsection (b)(1)(A) concerns provisions without deficit effect. *See supra* p. 166.

[564] Subsection (b)(1)(B) concerns provisions that worsen the deficit where the title fails to comply with instructions. *See supra* p. 168. Section 13214(b)(4)(E) of the Budget Enforcement Act added this reference. *See supra* p. 657.

[565] Subsection (b)(1)(D) concerns provisions with deficit effects "which are merely incidental to the non-budgetary components of the provision." *See supra* p. 168.

[566] Subsection (b)(1)(E) concerns provisions that worsen the deficit in the out-years beyond the reconciled years. *See supra* p. 169. Section 13214(b)(4)(E) of the Budget Enforcement Act added this reference. *See supra* p. 657.

[567] Subsection (b)(1)(F) concerns provisions that deal with Social Security. *See supra* p. 170. Section 13214(b)(4)(E) of the Budget Enforcement Act added this reference. *See supra* p. 657.

(2) such point of order being sustained, such material contained in such conference report or amendment shall be deemed stricken, and the Senate shall proceed, without intervening action or motion, to consider the question of whether the Senate shall recede from its amendment and concur with a further amendment, or concur in the House amendment with a further amendment, as the case may be, which further amendment shall consist of only that portion of the conference report or House amendment, as the case may be, not so stricken. Any such motion in the Senate shall be debatable for 2 hours. In any case in which such point of order is sustained against a conference report (or Senate amendment derived from such conference report by operation of this subsection), no further amendment shall be in order.[568]

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[568] Section 13214(b)(3) of the Budget Enforcement Act transferred this subsection (c) from Senate Resolution 286 (99th Congress, 1st Session), as amended by Senate Resolution 509 (99th Congress, 2d Session) *See infra* p. 657. On December 19, 1985, Senator Simpson, on behalf of Senators Armstrong, Roth, and Domenici, introduced a Senate Resolution 286 to apply the Byrd Rule to conference reports. As agreed to that day, that resolution read as follows:

S. RES. 286

> RESOLVED, That when the Senate is considering a conference report or House amendment with respect to a reconciliation bill or reconciliation resolution pursuant to section 310 of the Budget Act, upon a point of order being made by any Senator against extraneous material meeting the definition of subsections (d)(1)(A) and (d)(1)(D) of section 1201 of the Consolidated Omnibus Budget Reconciliation Act of 1985, and such point of order is sustained, any part of such report or amendment containing such material shall be deemed stricken, but it shall be in order to continue consideration of the remainder under the Rules and practices of the Senate and applicable law. An affirmative vote of three-fifths of the Members, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this resolution, as well as to waive or suspend the provisions of this resolution.
>
> The provisions of this resolution shall remain in effect until the date of termination of section 1201 of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(continued...)

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[568](...continued)

131 CONG. REC. S18,255 (Dec. 19, 1985).

Senator Roth described the resolution:

> Mr. ROTH. Mr. President, the purpose of this resolution is to remedy a possible unintended result of the Byrd amendment to the reconciliation bill, section [20001] of the Consolidated Omnibus Budget Reconciliation Act of 1985.
>
> That provision imposes a discipline upon this body which is not imposed on the other body. Basically, it requires that Senators not place extraneous provisions in reconciliation bills and resolutions.
>
> However, if Members of the other body are free to load up their bills and resolutions with extraneous provisions, I fear that our body will be at a disadvantage within respect to the other body. Since we cannot tell the other body how to conduct its business, the solution is to create a new Senate procedure for handling extraneous material originating in the other body and coming to us as part of a House amendment or a conference report. The situation is analogous to that in the other body when we send provisions to them which would violate their rule on germaneness if offered there rather than here.
>
> The other body's response to that situation has been to adopt clauses 4 and 5 of rule XXVIII of the House rules. The remedy proposed here is similar. It would permit a point of order to be raised against the extraneous material in House amendments or conference reports. With respect to a House amendment, if such point of order is sustained, the effect will be like that of a successful motion to strike out the offending language, and the Senate will be able to consider and act upon the remainder, if any, of the amendment.
>
> With respect to a conference report, if such point of order is sustained, the effect will be like that under rule XXVIII of the House rules; the Senate will be able, for example, to request further conference or to insist on its disagreement or to recede and concur in the House amendment with an amendment incorporating the remainder of the text of the conference report or any other permissible variation which does not revive the provision deemed stricken by the successful point of order.
>
> It should be noted that points of order may be made only with respect to two of the four categories of extraneous material in section 1201. This is because the two categories omitted are not applicable to matters to be transacted between the Houses. Moreover, it is intended that the remaining two categories be applied without reference to any instructions that may have been given to committees. Thus points of order may be raised against a provision which does not; produce a change in outlays or revenues or which produces a change which is merely incidental to the nonbudgetary components of the provision.

(continued...)

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[568](...continued)

> I believe that this resolution is a necessary step to protect the prerogatives of this body. With this protection, the Byrd amendment will be able to achieve a necessary reform without disadvantaging this body.

131 CONG. REC. S18,255 (Dec. 19, 1985). The Senate then agreed to the resolution by a voice vote. *See id.*

Clauses 4 and 5 of House Rule XXVIII (to which Senator Roth referred) provide:

> 4. (a) With respect to any report of a committee of conference called up before the House containing any matter which would be in violation of the provisions of clause 7 of Rule XVI if such matter had been offered as an amendment in the House, and which --
>
> > (1) is contained in any Senate amendment to that measure (including a Senate amendment in the nature of a substitute for the text of that measure as passed by the House) accepted by the House conferees or agreed to by the conference committee with modification; or
> >
> > (2) is contained in any substitute agreed to by the conference committee; it shall be in order, at any time after the reading of the report has been completed or dispensed with and before the reading of the statement, or immediately upon consideration of a conference report if clause 2(c) of this rule applies, to make a point of order that such nongermane matter, as described above, which shall be specified in the point of order, is contained in the report.
>
> For the purposes of this clause, matter which --
>
> > (A) is contained in any substitute agreed to by the conference committee;
> >
> > (B) is not proposed by the House to be included in the measure concerned as passed by the House; and
> >
> > (C) would be in violation of clause 7 of Rule XVI if such matter had been offered in the House as an amendment to the provisions of that measure as so proposed in the form passed by the House;
>
> shall be considered in violation of such clause 7.
>
> (b) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(continued...)

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[568](...continued)

(c) Notwithstanding the final disposition of any point of order made under paragraph (a), or of any motion to reject made pursuant to a point of order under paragraph (b), of this clause, it shall be in order to make further points of order on the ground stated in such paragraph (a), and motions to reject pursuant thereto under such paragraph (b), with respect to other nongermane matter in the report of the committee of conference not covered by any previous point of order which has been sustained.

(d) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the conference report shall be considered as rejected and the question then pending before the House shall be --

(1) whether to recede and concur in the Senate amendment with an amendment which shall consist of that portion of the conference report not rejected; or

(2) if the last sentence of paragraph (a) of this clause applies, whether to insist further on the House amendment.

If all such motions to reject are defeated, then, after the allocation of time for debate on the conference report as provided in clause 2(a) of this Rule, it shall be in order to move the previous question on the adoption of the conference report.

5. (a)(1) With respect to any amendment (including an amendment in the nature of a substitute) which --

(A) is proposed by the Senate to any measure and thereafter --

(i) is reported in disagreement between the two Houses by a committee of conference; or

(ii) is before the House, the stage of disagreement having been reached; and

(B) contains any matter which would be in violation of the provisions of clause 7 of Rule XVI if such matter had been offered as an amendment in the House;

it shall be in order, immediately after a motion is offered that the House recede from its disagreement to such amendment proposed by the Senate and concur therein and before debate is commenced on such motion, to make a point of order that such nongermane matter, as described above, which shall be specified in the point of order, is contained in such amendment proposed by the Senate.

(2) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject

(continued...)

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[568] (...continued)
the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(3) Notwithstanding the final disposition of any point of order made under subparagraph (1), or of any motion to reject made pursuant to a point of order under subparagraph (2), of this paragraph, it shall be in order to make further points of order on the ground stated in such subparagraph (1), and motions to reject pursuant thereto under such subparagraph (2), with respect to other nongermane matter in the amendment proposed by the Senate not covered by any previous point of order which has been sustained.

(4) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this clause, the motion to recede and concur shall be considered as rejected, and further motions --

> (A) to recede and concur in the Senate amendment with an amendment, where appropriate (but the offering of which is not in order unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration);
>
> (B) to insist upon disagreement to the Senate amendment and request a further conference with the Senate; and
>
> (C) to insist upon disagreement to the Senate amendment;

shall remain of high privilege for consideration by the House. If all such motions to reject are defeated, then, after the allocation of time for debate on the motion to recede and concur as provided in clause 2(b) of this Rule, it shall be in order to move the previous question on such motion.

(b)(1) With respect to any such amendment proposed by the Senate as described in paragraph (a) of this clause, it shall not be in order to offer any motion that the House recede from its disagreement to such Senate amendment and concur therein with an amendment, unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration.

(2) Immediately after any such motion is offered and is in order and before debate is commenced on such motion, it shall be in order to make a point of order that nongermane matter, as described in subparagraph (1) of paragraph (a) of this clause, which shall be specified in the point of order, is contained in the language of the Senate amendment, as proposed by to be amended by such motion, copies of which are then available on the floor.

(3) If such point of order is sustained, it then shall be in order for the Chair to entertain a motion, which is of high privilege, that the House reject

(continued...)

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[568](...continued)
the nongermane matter covered by the point of order. It shall be in order to debate such motion for forty minutes, one-half of such time to be given to debate in favor of, and one-half in opposition to, the motion.

(4) Notwithstanding the final disposition of any point of order under subparagraph (2), or of any motion to reject made pursuant to a point of order under subparagraph (3), of this paragraph, it shall be in order to make further points of order on the ground stated in subparagraph (1) of paragraph (a) of this clause, and motions to reject pursuant thereto under subparagraph (3) of this paragraph, with respect to other nongermane matter in the language of the Senate amendment, as proposed to be amended by the motion described in subparagraph (1) of this paragraph, not covered by any previous point of order which has been sustained.

(5) If any such motion to reject has been adopted, after final disposition of all points of order and motions to reject under the preceding provisions of this paragraph, the motion to recede and concur in the Senate amendment shall be considered as rejected, and further motions --

> (A) to recede and concur in the Senate amendment with an amendment, where appropriate (but the offering of which is not in order unless copies of the language of the Senate amendment, as proposed to be amended by such motion, are then available on the floor when such motion is offered and is under consideration);
>
> (B) to insist upon disagreement to the Senate amendment and request a further conference with the Senate; and
>
> (C) to insist upon disagreement to the Senate amendment;

shall remain of high privilege for consideration by the House. If all such motions to reject are defeated, then, after the allocation of time for debate on the motion to recede and concur in the Senate amendment with an amendment as provided in clause 2(b) of this Rule, it shall be in order to move the previous question on such motion.

(c) If, on a division of a motion that the House recede and concur, with or without amendment, from its disagreement to any such Senate amendment as described in paragraph (a)(1) of this clause, the House agrees to recede, then, before debate is commenced on concurring in such Senate amendment, or on concurring therein with an amendment, it shall be in order to make and dispose of points of order and motions to reject with respect to such Senate amendment in accordance with applicable provisions of this clause and to effect final determination of these matters in accordance with such provisions.

RULES OF THE HOUSE OF REPRESENTATIVES Rule XXVIII(4) & XXVIII(5) (1988).

On October 16, 1986, Senator Simpson introduced another Senate Resolution, on behalf of Senators Roth, Domenici, and Chiles, modifying the earlier resolution. That

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[568] (...continued)
resolution (S. Res. 509, 99th Cong., 2d Sess, 132 CONG. REC. S16,415 (Oct. 16, 1986)) read much as does subsection (c) now.

Again, Senator Roth explained the resolution:

> Mr. ROTH. Mr. President, on December 19, 1985, the Senate adopted Senate Resolution 286, which I authored. The purpose of Senate Resolution 286 was to extend the prohibition against extraneous matter in reconciliation bills and resolutions, popularly known as the Byrd rule after its distinguished author, to House language coming over to us either in a conference report or as a House amendment. But for Senate Resolution 286, the Senate would have been in a position of imposing a much needed discipline on itself while facing the prospect that the House could load down reconciliation bills and resolutions with all kinds of extraneous matter.
>
> When the Senate considered Senate Resolution 286, I noted its similarity to rule XXVIII of the House rules by which the House seeks to protect itself against Senate provisions that would violate House rules on germaneness if offered there. Under Senate Resolution 286, when the point of order against extraneous matter is made and sustained, the offending language is deemed stricken and the Senate is permitted to consider the remainder "under the rules and practices of the Senate and applicable law."
>
> In contrast, in the analogous situation under rule XXVIII of the House rules, after the offending language is deemed stricken, the opportunity to debate and to make further amendments is restricted under the rule and the practices of the House. In practical terms this means that one making a point of order does not have to overcome the burden that his or her success might unravel all the negotiations that led up to the conference report or amendment in question.
>
> Therefore, on reflection, it is my considered opinion that Senate Resolution 286 needs to be amended so that successful points of order intended to surgically remove offending language, do not provide the occasion for unraveling the remaining language of conference reports which Senate conferees have worked out in conference.
>
> The amendment to Senate Resolution 286 would preserve the original purpose of that resolution but would further refine the implementation, in the case of conference reports or House amendments, by limiting debate and, in the case of conference reports, by precluding amendments.
>
> Conference reports as such are not subject to amendment. It would be highly inappropriate, therefore, to allow such language to become amendable once extraneous matter is removed by a successful point of order. Unfortu[na]tely, that result would occur without the adoption of the pending resolution because a conference report falls as a matter of parliamentary law when a successful point of order is made against it. And when the conference report falls, the last amendment or amendments are before this body subject to further debate and further action.

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> But this result is contrary to the special purpose of Senate Resolution 286. Such a result would make it more difficult to police our policy against extraneous matter. For if a Senator desiring to make a point of order against extraneous matter realizes that his success could cause the entire conference agreement to become amendable, then he would be inclined to go forward guided more by his position on the substance of the conference agreement than by his desire to enforce Senate policy on extraneous matter. That would be unfortunate.
>
> The pending resolution would change that result. It would allow a successful point of order to excise the offending language in a conference report and would, in effect, treat the remaining language in the same way we treat conference reports, that is, as not subject to amendment.
>
> House amendments, like conference reports, would be subject to the provision limiting debate. However, House amendments would be subject to further amendment since, unlike a conference report, they have not been agreed to by the Senate.
>
> The resolution also treats the situation where the House has sent us an amendment containing extraneous matter and the Senate is considering a Senate amendment to the House amendment containing such extraneous matter. This kind of Senate amendment is included within the phrase "amendment between the Houses" in the pending resolution. This kind of Senate amendment to a House amendment would be subject to the same procedure as would the House amendment.
>
> It should also be noted that more than one point of order may be made against a conference report or amendment between the Houses. In the case of Senate consideration of conference reports, it should be noted that a second point of order would be made against the resulting Senate amendment created by operation of this resolution upon a successful point of order being made. It cannot be made against the conference report because it is no longer before the body. That is why the phrase "Senate amendment derived from such conference report by operation of this resolution" is included in the resolution; such amendments are basically treated under the procedure for conference reports. This means they are not amendable.
>
> In my opinion, the procedural refinements contained in the pending resolution are necessary to implement the original purpose of Senate Resolution 286 and should be adopted.

132 CONG. REC. S16,415 (Oct. 16, 1986). The Senate then agreed to that resolution by a voice vote. *See id.*

(d)[569] General Point of Order. -- Notwithstanding any other law or rule of the Senate, it shall be in order for a Senator to raise a single point of order that several provisions of a bill, resolution, amendment, motion, or conference report violate this section. The Presiding Officer may sustain the point of order as to some or all of the provisions against which the Senator raised the point of order. If the Presiding Officer so sustains the point of order as to some of the provisions (including provisions of an amendment, motion, or conference report) against which the Senator raised the point of order, then only those provisions (including provisions of an amendment, motion, or conference report) against which the Presiding Officer sustains the point of order shall be deemed stricken pursuant to this section. Before the Presiding Officer rules on such a point of order, any Senator may move to waive such a point of order as it applies to some or all of the provisions against which the point of order was raised. Such a motion to waive is amendable in accordance with the rules and precedents of the Senate. After the Presiding Officer rules on such a point of order, any Senator may appeal the ruling of the Presiding Officer on such a point of order as it applies to some or all of the provisions on which the Presiding Officer ruled.

(e)[570] Determination of Levels. -- For purposes of this

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[569] Section 13214(a)(8) of the Budget Enforcement Act added this subsection (*see infra* p. 656) and section 13214(b)(2)(C) of the Budget Enforcement Act redesignated it as subsection (d). *See infra* p. 656. Section 13214(b)(2)(C) of the Budget Enforcement Act (*see infra* p. 656) also redesignated what used to be subsection (d) as subsection (b). *See supra* pp. 166-172.

Subsection (d) allows a Senator to raise one point of order regarding provisions at several different parts of the bill. While the Senate has frequently addressed extraneous matter in reconciliation bills in an omnibus fashion, it has usually done so by unanimous consent. *See, e.g.,* 127 Cong. Rec. S6,664-66 (1981); Senate Precedent PRL19810622-001 (June 22, 1981) (LEGIS, Rules database).

[570] Section 13214(a)(8) of the Budget Enforcement Act added this subsection (*see infra* p. 656) and section 13214(b)(2)(C) of the Budget Enforcement Act redesignated it as subsection (e). *See infra* p. 656. This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 201(g), *supra* p. 32; section 302(g), *supra* p. 82; section 310(d)(4), *supra* p. 142; *supra* p. 82; section 311(c); and section 258B(h)(4) of Gramm-Rudman-Hollings, *infra* p. 571.

section, the levels of new budget authority,[571] budget outlays,[572] new entitlement authority,[573] and revenue for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget[574] of the Senate.[575]

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[571] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[572] Section 3(1) defines "budget outlays." *See supra* p. 11.

[573] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204).

[574] This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 201(g), *supra* p. 32; section 302(g), *supra* p. 82; section 310(d)(4), *supra* p. 142; section 311(c), *supra* p. 157; and section 258B(h)(4) of Gramm-Rudman-Hollings, *infra* p. 571.

[575] The Senate has struggled with the nature of a reconciliation bill. On the one hand, reconciliation presents an opportunity to bundle together in one bill much of the Congress's deficit reduction plan. Committees more willingly agree to take steps to reduce the deficit in areas within their jurisdiction if they know that other committees will also share the sacrifice.

As well, reconciliation allows the Congress to make changes in entitlement law by changing the underlying law. Without reconciliation, discretionary programs and the Appropriations process would be forced to bear a disproportionate burden of deficit reduction.

On the other hand, reconciliation is one of the few exceptions to the general rule in the Senate of unlimited debate. It is extremely difficult to amend the reconciliation bill. The Senate should be somewhat circumspect about what it allows itself to consider under these kinds of restrictions.

This tension between the good purposes of the reconciliation bill and the strict procedures governing it has led to efforts to prohibit what has been come to be known as "extraneous" matter on the bill.

Origins of the Byrd Rule

For example, as early as June 22, 1981, the bipartisan leadership offered an amendment to strike extraneous matter from the bill. On that day, during consideration of S. 1377, the Omnibus Reconciliation Act of 1981, Majority Leader Baker, offered the amendment for himself and Democratic Leader Robert C. Byrd, Budget Committee Chairman Domenici, and the ranking minority member of that committee, Senator Hollings. The debate that day included the following:

> Mr. BAKER. . . .
>
> Aside from its salutary impact on the budget, reconciliation also has implications for the Senate as an institution. So long as a preponderance of its subject matter has a budgetary impact, a reconciliation bill could contain

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non-budgetary amendments to substantive law, and still be protected under the Budget Act. That notwithstanding, I believe that including such extraneous provisions in a reconciliation bill would be harmful to the character of the U.S. Senate. It would cause such material to be considered under time and germaneness provisions that impede the full exercise of minority rights. It would evade the letter and spirit of rule XXII [regarding precedence of motions, including the procedures for cloture]. It would create an unacceptable degree of tension between the Budget Act and the remainder of Senate procedures and practice. Reconciliation was never meant to be a vehicle for an omnibus authorization bill. To permit it to be treated as such is to break faith with the Senate's historical uniqueness as a forum for the exercise of minority and individual rights. For principally these reasons, I have labored with distinguished minority leader, with the chairmen and ranking minority member of the Budget Committee, and with other committee chairmen to develop a bipartisan leadership amendment. This amendment will strike from the bill subject matter which all these parties can agree is extraneous to the reconciliation instructions set forth last month in House Concurrent Resolution 115. What will remain in the bill is directly responsive to these instructions, has a budgetary savings impact, and plainly belongs in a reconciliation measure.

. . . .

Mr. ROBERT C. BYRD. Mr. President, if the reconciliation bill is adopted in its present form, it will do violence to the budget reform process. The reconciliation measure contains many items which are unrelated to budget savings. This development must be viewed in the most critical light, to preserve the principle of free and unfettered debate that is the hallmark of the U.S. Senate.

. . . .

The ironclad parliamentary procedures governing the debate of the reconciliation measure should by no means be used to shield controversial or extraneous legislation from free debate. However, language is included in the reconciliation measure that would enact routine authorizations that have no budget impact whatsoever. In other cases, legislation is included that makes drastic alterations in current policy, yet, has no budgetary impact.

. . . .

The reconciliation bill, if it includes such extraneous matters, would diminish the value of rule XXII. The Senate is unique in the way that it protects a minority, even a minority of one, with regard to debate and amendment. The procedures that drive the reconciliation bill set limits on the normally unfettered process of debate and amendment, because policy matters that do not have clear and direct budgetary consequences are supposed to remain outside its scope.

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> The amendment offered by the majority leader and me omits several non budget related authorizations which should also be stricken from this bill. The fact that they were not included in this amendment should not be construed as accepting their inclusion in the bill.
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> . . . .
>
> We have gone as far as we can go in this amendment, but we have not gone as far as we should go.

127 CONG. REC. S6,664-66 (1981); Senate Precedent PRL19810622-001 (June 22, 1981) (LEGIS, Rules database). That day, the Senate agreed to the amendment by a voice vote. *See id.*

Adoption of the Byrd Rule

On October 24, 1985, the Senate debated and adopted the Byrd Rule as an amendment to the Consolidated Omnibus Budget Reconciliation Act of 1985. Excerpts from the debate that day follow:

> AMENDMENT NO. 878
>
> Mr. BYRD. Mr. President, I send to the desk an amendment sponsored by myself, Mr. Dole, Mr. Chiles, Mr. Stevens, and Mr. Domenici.
>
> The PRESIDING OFFICER. The clerk will report.
>
> The bill clerk read as follows:
>
> The Senator from West Virginia [Mr. Byrd], for himself, Mr. Dole, Mr. Chiles, Mr. Stevens, and Mr. Domenici, proposes an amendment numbered 878:
>
>> At the appropriate place add the following: When the Senate is considering a reconciliation bill upon a point of order being made and sustained by any Senator, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which super majority shall be required to successfully appeal the ruling of the Chair on these matters.
>
> Mr. BYRD. Mr. President, the amendment speaks for itself. I would just say that we are in the process now of seeing, if we have not seen earlier, the Pandora's box which has been opened to the abuse of the reconciliation process. That process was never meant to be used as it is being used. There are 122 items in the reconciliation bill that are extraneous. Henceforth, if the

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majority on a committee should wish to include in reconciliation recommendations to the Budget Committee any measure, no matter how controversial, it can be brought to the Senate under an ironclad built-in time agreement that limits debate, plus time on amendments and motions, to no more than 20 hours.

It was never foreseen that the [Congressional Budget] Act would be used in that way.

So if the budget reform process is going to be preserved, and more importantly if we are going to preserve the deliberative process in this U.S. Senate -- which is the outstanding, unique element with respect to the U.S. Senate, action must be taken now to stop this abuse of the budget process.

. . . .

Mr. President, the Senate is a deliberative body, and the reconciliation process is not a deliberative process. It [is] not a deliberative process. Such an extraordinary process, if abused, could destroy the Senate's deliberative nature. Senate committees are creatures of the Senate, and, as such, should not be in the position of dictating to the Senate as is being done here. By including mater[i]al not in their jurisdiction or matter which they choose not to report as separate legislation to avail themselves of the nondeliberative reconciliation process, Senate committees violate the compact which created both them and the reconciliation process.

. . . .

The Senate must protect itself from this attack by its own committees, and, if necessary, the reconciliation bill will be amended to the extent necessary to achieve a preponderance of nonreconciliation matters and thus return this bill to a nonprivileged status.

Under the [Congressional Budget] Act, other committees are mandated to make recommendations to the Budget Committee -- those committees make their recommendations to the Budget Committee, and the Budget Committee cannot add to or subtract from those instructions. It cannot amend the instructions. It cannot take from those instructions. It cannot add its own. It merely is to perform an administrative function -- and that is, to put all such recommendations into a single package which, when sent to the floor and taken up, is covered by an overall 20-hour time limit.

Normal cloture is but an infinite speck on the horizon as compared to this kind of cloture. Under normal cloture, we have 100 hours. Each Senator has 1 hour, theoretically. But under the restrictions of the Budget Act, 20 hours is all there is on a reconciliation bill.

We saw a moment ago how much time can be taken by one amendment. First there is the waiver. That is an hour. Then there is the amendment. That is 2 hours. Then there is an amendment to the amend-

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ment. That is another hour.

So, when all is boiled down, we have not only an abuse of the budget process by way of which other committees recommend to the Budget Committee any controversial bill they want -- repeal of the Hobbs Act, acid rain, you name it -- but also, when reconciliation comes to the floor, one or two Senators can offer an amendment, and consume at least 4 hours out of the 20 hours, if they want to take all the time that is available with regard to the waiver, the amendment, the amendment to the amendment, quorum calls, and so on.

So, Mr. President, I have offered this amendment, which is being cosponsored by the other Senators whose names have been stated, in order to correct this abuse in the future.

This provides that if a point of order is raised and upheld against extraneous matter in the reconciliation bill or matter that has been recommended by a committee wh[i]ch does not have jurisdiction over the subject matter, then all such matter that is in the bill will fall and is not subject to being offered as a further amendment thereto.

. . . .

Mr. DOMENICI. . . .

As I read the amendment, I say to the distinguished minority leader, the second part of this amendment -- "No motion to waive germaneness on reconciliation bills shall be agreed to unless," -- I understand that this applies to an amendment offered on the floor by a Senator. Is the Senator from New Mexico correct?

Mr. BYRD. The Senator is correct and I was incorrect.

. . . .

Mr. DOMENICI. Mr. President, I wish to ask one further question of the principal sponsor and drafter of the amendment, the distinguished minority leader. I wonder if he intended to include in the second part of the amendment, "no motion to waive germaneness." I wonder if he wanted that to be just germaneness, whereas before, when we were speaking of striking what a committee sent us, the Senator used two descriptions: he used germaneness and he used extraneous. It appears to me he might want, in the second part, "no motion to waive germaneness or extraneousness," and then provide for the supermajority. Otherwise, you make extraneous material subject to a point of order, but the point of order could be waived by a simple majority.

Mr. BYRD. Mr. President, the distinguished Senator from New Mexico makes an excellent point. I agree with him and think it should be so strengthened and I modify my amendment so to accomplish that purpose.

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The PRESIDING OFFICER. The minority leader has a right to modify his amendment. If he will send it to the desk, the amendment will be so modified.

The amendment, No. 878, as modified, reads as follows:

At the appropriate place add the following:

> When the Senate is considering a reconciliation bill, upon a point of order being made by any Senator and sustained, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which supermajority shall be required to successfully appeal the ruling of the Chair on these matters which include the points of order on extraneous matters and matter not properly reported from a committee.

. . . .

Mr. JOHNSTON. . . .

My question is, Can you appeal the ruling of the Chair, make a point of order, that a matter is not extraneous, or is germane, have the Chair rule against you and then reverse that on a simple majority vote, and overruling the ruling of the Chair? Or do you mean for that also to be three-fifths?

Mr. BYRD. Would the Senator ask that question again?

Mr. JOHNSTON. The Parliamentarian strikes from the bill a matter which is extraneous or which is nongermane. I am interested in the matter, and I make a point of order that the matter is not extraneous or is germane to the bill. The Parliamentarian, the Chair, rules against me. I appeal the ruling of the Chair. Can we thereby overturn the Chair by simple minority vote?

Mr. BYRD. No.

Mr. JOHNSTON. Can you challenge the ruling of the Chair at all? If so, how?

Mr. BYRD. The Senator can appeal the ruling of the Chair.

Mr. JOHNSTON. Appeal the ruling of the Chair, but what vote

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would that require?

Mr. BYRD. Three-fifths.

Mr. JOHNSTON. I think in view of the earlier answer that this motion to waive germaneness applies only to amendments offered on the floor -- it would apply to both -- and committee action?

Mr. BYRD. Yes.

Mr. JOHNSTON. The automatic ruling out as well as an amendment offered on the floor?

Mr. BYRD. That is correct.

Mr. DOMENICI. I think the distinguished sponsor had answered previously that the supermajority requirement for a waiver applied only to committee reported language, but when we exchanged views here, he clearly indicated that it applies to waivers of the germaneness requirement or the extraneous language point of order or appeals to rulings of the Chair.

Mr. JOHNSTON. I wonder if this language is specific enough to apply to an appeal from the ruling of the Chair. It speaks in terms of a motion to waive germaneness of reconciliation. I think it might be rewritten a bit to make that clear.

Mr. BYRD. Mr. President, that is the intent of the sponsor. If I need to modify it to make it clear, I will do so.

. . . .

Mr. McCLURE. I think the Senator from Louisiana has raised perhaps a good point because we have interchangeably talked here of the opportunity of a Member who does not like a ruling of the Chair being able to appeal the ruling of the Chair, and we have not clearly distinguished that from the opportunity to make a motion to suspend pursuant to the Budget Act. Maybe the answer to that question is to make certain that either an appeal from the ruling of the Chair or a motion with respect to germaneness should have to have a three-fifths vote.

I think that would make it clear because in our practice here earlier today it was not an appeal from the ruling of the Chair. As a matter of fact, it was not even a ruling of the Chair. But I think the Senator is very clear in his explanation that it is intended to cover both. Perhaps we ought to make a further statement in the amendment to make certain that it states that.

. . . .

Mr. DOMENICI. Mr. President, I want to compliment the distinguished minority leader for the amendment. I think we have a suggestion

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for a further modification. We will talk with the Senator from Louisiana. We are working on it. I think there are a couple of words we ought to add.

. . . .

Mr. DOMENICI. Mr. President, as I was saying, I commend the distinguished minority leader. Frankly, as the chairman of the Budget Committee, I am aware of how beneficial reconciliation can be to deficit reduction. But I am also totally aware of what can happen when we choose to use this kind of process to basically get around the Rules of the Senate as to limiting debate. Clearly, unlimited debate is a prerogative of the Senate that is greatly modified under this process.

I have grown to understand that this institution, while it has a lot of shortcomings, has some qualities that are rather exceptional. One of those is the fact it is an extremely free institution, that we are free to offer amendments, that we are free to take as much time as this U.S. Senate will let us to debate, and have those issues thoroughly understood both here and across this country.

I do not like to see committees put amendments on reconciliation that they have not been able to pass for years, or in the process of doing reconciliation just add untold numbers of amendments in order to be immune from unlimited debate.

. . . .

Mr. EVANS. Mr. President, I commend the majority and minority leaders, and the chairman and ranking member of the Budget Committee for what they are attempting to do. I think it represents a major step forward in correcting an evil we fell into today which is being well recognized. . . .

. . . . As I understand the language, and the minority leader . . . can correct me if I am in error, do I understand correctly that the proposal made, if it had been in the law prior to today, would have meant that the textile bill as proposed would have been ruled out of order from this proposal?

Mr. BYRD. If a point of order were made against that bill with respect to germaneness and if the point of order were upheld, then it would take a three-fifths vote to overrule the Chair, under my amendment.

. . . .

Mr. EVANS. I thank the minority leader.

Let me add briefly that this is a splendid move forward. If there had been any real progress made today, perhaps this is the best progress we have made for the long-term future of the Senate.

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> Mr. BYRD. . . .
>
> The amendment (No. 878), as further modified, is as follows:
>
> > At the appropriate place add the following: "When the Senate is considering a reconciliation bill, upon a point of order being made by any Senator, and sustained, any part of the bill not in the jurisdiction of the reporting committee or extraneous to the instructions given that committee shall be deemed stricken from the bill and may not be offered as a floor amendment. This provision may be waived by three-fifths of the Senators duly chosen and sworn. No motion to waive germaneness on reconciliation bills shall be agreed to unless supported by three-fifths of the Senators duly chosen and sworn, which super majority shall be required to successfully appeal the ruling of the Chair on these matters which include the points of order on extraneous matters and matter not properly reported by a committee."
>
> Mr. DOLE. Mr. President, I want to thank my colleague. I think the debate we have had on this amendment has been very helpful. As I look at the votes today, if it had been in effect now, this amendment would not be pending and that would be an improvement on the reconciliation bill. It was never intended as the answer for every amendment whether it is the Hobbs Act, abortion, prayer in school, or anything else. Ordinarily, you just wait for the reconciliation bill to come up every year and put anything on reconciliation. Obviously, that was not the purpose of the Budget Act.

131 CONG. REC. S14,032-37 (Oct. 24, 1985). The Senate went on to adopt the Byrd amendment by a unanimous vote of 96-0. *Id.* at S14,038. (Senators Eagleton, Hatfield, Simon, and Stennis were necessarily absent. *Id.*)

The New Stringency

On October 13, 1989, the Senate evinced a new stringency in the application of the Byrd Rule. Majority Leader Mitchell, on behalf of himself and Senators Dole, Sasser, Domenici, Byrd, Bentsen, and Packwood, offered a leadership amendment to strike extraneous provisions from the reconciliation bill (S. 1750). The amendment went further than the text of the Byrd Rule in its definition of extraneousness. The debate proceeded as follows:

> Mr. MITCHELL. Mr. President, the purpose and effect of this amendment may be summed up in a single sentence. The purpose of the reconciliation process is to reduce the deficit. I repeat, the purpose of the reconciliation process is to reduce the deficit.
>
> The amendment is lengthy, consisting of many pages, words, and numbers, but it has that fundamental objective. As I said when I addressed the Senate a week ago Thursday, the reconciliation process has in recent years

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gone awry. The special procedures included in the Budget Act as a way of facilitating deficit reduction items became a magnet to other legislation which is unrelated to the objective of reducing the deficit.

. . . .

But it is time now to restore the reconciliation process to its original objective. That is what this amendment does. It asks sacrifice of every Senator. It asks discipline of every Senator. It asks that the regular legislative process be restored to the dignity it once had.

. . . .

Mr. DOLE. . . .

. . . .

The bottom line, as I see it, is discipline. Do we have the will to be responsible, to really reduce the Federal deficit or do we undercut the process by piling on important programs, taxes, and other legislative goodies that cost the taxpayers millions in the name of deficit reduction? Many of these provisions have never even had a hearing, never had a hearing, and not one witness from anyplace came in to testify for or against most of the provisions.

. . . .

So [the Caucus] in affect directed the leader to have the staff put together something that went beyond the Byrd rule; something that extended -- I guess you would call it an extension of the Byrd rule. . . .

. . . .

I believe the proposal such as the rural health care package and others are meritorious in their own right and can withstand the test of the normal legislative process, and they should. Reducing the deficit is a priority; the deficit keeps climbing, and we have not had much success in getting it down. I am not certain everybody in America understands all the inside baseball that goes on around here, whether they understand reconciliation and conference committees and motions to strike, but I do believe the American people recognize responsibility when they see it, and tonight they are seeing responsibility in action.

That is the whole purpose of this amendment. The authors will oppose any effort to add back individual provisions, and I certainly urge our colleagues to support those efforts. That does not mean that a provision that some Senator might have -- and I will speak to this side of the aisle -- will not be picked up in another revenue bill or in a separate piece of legislation. We are not here to pass judgment on what Senators may have in mind as far as legislation is concerned. On this package, it is going to be a reconciliation bill in the finest sense of the word.

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. . . .

Mr. SASSER. Mr. President, with this amendment we are firing a shot, I believe, for fiscal responsibility, a shot that I think will be heard throughout the corridors of this Congress. . . . With this amendment, we are putting a deficit reduction bill back in the category of being a deficit reduction bill. It is an amendment that sets this body's priorities straight.

What we are seeking to do is to remove from this reconciliation vehicle, all extraneous matter, everything that does not either reduce Federal spending or raise Federal revenues will be stricken. That is the purpose of a reconciliation bill. Extraneous matters have been accumulating on these reconciliation bills now for a number of years, to the point that they are on the verge of sinking the reconciliation bill, and in so doing, defeating the budget process.

At some point in the not too distant future, if we continue down the path that we have been going, the Parliamentarian, on a point of order, will be forced to rule that a so-called reconcil[i]ation bill is not a reconcil[i]ation bill at all, that it is simply a vehicle for so much extraneous matter that deficit reduction has become a subordinate and wholly incident[a]l purpose for which a so-called reconciliation bill will be offered in the future. I do not say that to impugn the worth of many extraneous matters on this reconciliation bill.

. . . .

Mr. DOMENICI. . . .

. . . .

There are a few things about the U.S. Senate that people understand to be very, very significant. One is that you have the right, a rather broad right, the most significant right, among all the parliamentary bodies in the world to amend freely on the floor. The other is the right to debate and to filibuster.

When the Budget Act was drafted, the reconciliation procedure was crafted very carefully. It was intended to be used rather carefully because, in essence, Mr. President, it vitiated tho do we undercut the processristics of this place that many have grown to respect and admire. Some think it is a marvelous institution of democracy, and if you lose those two qualities, you just about turn this U.S. Senate into the U.S. House of Representatives or other parliamentary body.

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. . . . If the House Rules Committee clears a bill, it makes no difference to them whether it is on reconciliation or freestanding. They set the rules for debate in that institution then and there. We do not have that. The

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only Rules Committee we have is the floor of the U.S. Senate and a relatively new one called reconciliation.

Today we have met the enemy. As Pogo says "We met the enemy and he is us." We are going to use the process available under the Budget Act to strip from this bill not only those matters which the Parliamentarian would call extraneous but also those which were never intended because they are not pure deficit reduction matters. Thus, they are broader than the Byrd rule, irrelevant and extraneous,and we are going to strike them.

. . . .

Mr. GORTON. . . .

First, we are doing what we ought to do. As the distinguished majority leader said earlier during the course of this debate, the purpose of a reconciliation bill is to reduce the budget deficit. . . .

Second, and equally important, by this course of action this evening we are not doing what we ought not to do. The distinguished minority leader pointed out that many of the extraneous elements in this resolution before this amendment include good legislation. From a brief review of that legislation, I know this Senator agrees with well over half of those pieces of substantive legislation. But all of them, whether this Senator agrees with them or not, share one feature in common: They have not been debated on the floor of the Senate and cannot be effectively debated as a part of a reconciliation bill. They cannot effectively be amended as a part of a reconciliation bill.

Thus, their inclusion, whether they are good, bad, or indifferent, would utterly destroy the very purpose of the Senate of the United States, as so eloquently described by the President pro tempore last Sunday. It is absolutely essential that, even with this legislation, we have the right to debate and the right to amend.

. . . .

Mr. RUDMAN. . . .

I would say it was informally advanced beyond the Byrd rule by what we have now adopted. I guess I would call it an informal Dole-Mitchell-Sasser-Domenici-Packwood-Bentsen amendment which simply said: If it does not raise revenue or save money, we do not want it in here.

I wish the distinguished President pro tempore might offer that as a formal amendment. It would save us a lot of grief in the coming years.

Mr. President, there ought to be a lesson in what happened here today and yesterday and last week. . . .

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The net result of that, Mr. President, is what the distinguished President pro tempore said on Sunday about this body, which has the ability to debate and amend and consider legislation. I will tell my colleagues, if there is a great disappointment to this Senator in my 8 years here, it is that some of the most important issues we can discuss we never have the chance to debate and amend on this floor because we are totally immersed in this budget process from January to December; maybe this year shorter.

. . . .

Mr. BYRD. Mr. President, John Stuart Mill said, "On all great subjects, much remains to be said." This is a great subject, the reconciliation bill, and much remains to be said. . . .

I have seen the Senate many times when it gave me reason to be concerned about its future. I have also seen it on some occasions when it gave me reason to be proud. . . .

Tonight I think that we should pause to reflect upon this institution to which Gladstone, that great English statesman who lived during the long reign of Queen Victoria and who was Prime Minister of England four times, referred when he spoke of the U.S. Senate as "that remarkable body, the most remarkable of all the inventions of modern politics." That is what this institution is. . . .

. . . .

The U.S. Senate is the centerpiece of the great compromise. It is the masterpiece of the men who wrote the Constitution. . . . They were wise men, and they saw the need for a system of checks and balances, and the Senate was the balance wheel of that system. The Senate was given extraordinary powers . . . . But the basic cement that was the very foundation of this balance wheel were two in number, the right to debate and the right to amend. The other body may amend, but the other body may also issue a rule which, if agreed to, will confine amendments to one in number or two in number or three or none and direct that a certain Member will be the only Member who will offer that one amendment or those two amendments.

The House has the previous question, but not the Senate. The Senate allows unrestricted debate. We now and then restrict ourselves through the cloture motion, which first was created in 1917. But the right to debate and to amend is why we should be proud of this institution, why we should revere it.

The Constitution, in section 7 of article I, says that measures that raise revenues shall begin in the House of Representatives, but it also says that the Senate may propose or concur with amendments as on other bills. So there is a constitutional right reposed in the Senate to amend eve[n] revenue bills.

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[575](...continued)

The Senate and the House have their tensions between them, as do the executive and the legislative, all these with the built-in tensions that the forefathers took great care to fashion in order to make this a system of checks and balances.

But in the reconciliation bill, we were about to inflict our own mortal wound, as Brutus did with the same dagger that he had plunged into Caesar's blood, bringing a bill of such magnitude here which contained scores of measures, on any one of which the Senate should have had the opportunity to debate at full length and to amend. What hidden pieces of legislation might come to the floor in a package of this size? What hidden legislation we might vote upon and come to regret at a later time?

This is an institution for the protection of minorities, an institution in which the minority can put a bridle on the majority for at least a while until the country can be awakened to the mistakes that might otherwise be visited upon the people. We should not view this Senate lightly, and never should be party to weakening this institution, with which we have been blessed.

Yes, there were limitations on debate in 1919 in the League of Nations debate, and in 1926 in the World Court debate, limitations through the cloture rule, but their price was substantial concessions by the majority.

The Senate is . . . the only forum in which minorities are protected against the sudden waves of passion that might sweep over the Nation.

A reconciliation bill is a super gag rule, the foremost ever created by this institution. Normal cloture is but an infinite speck on the distant horizon when compared with a reconciliation bill. Cloture may be invoked on any measure, motion, or matter. Sixteen Senators sign a cloture petition; parts of 3 days transpire before cloture is invoked; and when it is invoked, it is invoked on only one matter or one measure or one motion. Then there are 30 hours of debate. The provision is within that rule that that time may be extended by a three-fifths majority vote to whatever -- 40 hours, 50, 75 or 100 hours. But not so with reconciliation. Reconciliation comes to the floor. There is no opportunity to debate a motion to proceed, whereas, under cloture, an attack can be made by the minority even on the motion to proceed. The minority ought to be zealous in protecting that right; the minority may be on this side of the aisle tomorrow, as it was yesterday.

Under reconciliation there is no motion provided to extend that time beyond 20 hours, but there is a motion that is nondebatable and can be invoked by only a majority of Members to reduce the time, and it can be reduced to 10 hours or to 5 hours or to 2 hours or to 1 hour without debate. Only a majority vote is needed to reduce it to no time:

Mr. President, I move that the time remaining on reconciliation be reduced to no time. What can you do about it? Weep. Reconciliation is one real beartrap.

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And so it has been with sorrow that some of us have seen what has been happening on reconciliation. It is a process which has gotten out of hand and, if continued, it will undermine the deliberative nature of the institution.

It is a process by which committees of the Senate may dictate to the Senate. You take what we give you. There is not a thing you can do about it. Oh, yes, you can strike. But you take what we give you.

And within those committees that determination is made by a majority. There is a 17-member committee, and 9 members of the committee can determine that.

Send that to the Budget Committee, and the Budget Committee has no alternative but to send it to the Senate, and here we are faced with a super, super, colossally super, gag rule.

So we ought to take the utmost care in handling this legislative weapon.

Mr. President, I have had my faith renewed in this institution in these recent hours. . . .

. . . .

Yes, there were important measures wrapped into this reconciliation bill. But I hope that this is the beginning of the end of the abuse of the reconciliation process. I hope that it will be a lesson learned by all of us that we might in the future take heed, and remember not to put that measure that is so dear to our hearts into the reconciliation package. . . .

Mr. President, I close by saying, as I began, that human ingenuity can always find a way to circumvent a process. And reconciliation is a process. It has been abused terribly. But I have regained my faith. We are told in the Scriptures:

> Remove not the ancient landmark, which thy fathers have set.

The Constitution is the old landmark which they have set. And if we do not rise to the call of the moment and take a stand, take a strong stand against our own personal interests or against party interests, and stand for the Constitution, then how might we face our children and gran[d]children when they ask of us as Caesar did to the centurion,

> How do we fare today?

And the centurion replied,

> You will be victorious. As for myself, whether I live or die, tonight I shall have earned the praise of Caesar.

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I not only compliment, but I also thank Members who have risen in this moment to do the responsible thing. We are going to look back on this day. So when you go with pride to meet the other body in conference, go with strong hearts, with confidence, and a determination that you are going to uphold the principles that our forefathers, men of this institution, stood for. Yours is an equal body -- the Senate.

When Aaron Burr walked out of the Old Senate Chamber on March 4, 1805 after had sat in the Chair, and presided over the impeachment trial of Supreme Court Justice Samuel Chase -- Burr had killed Alexander Hamilton in a duel at Weehawken, NJ. He sat in that chair as though nothing had ever happened. Warrants had been issued in the State of New Jersey and New York for his arrest. But he presided over that trial with a degree of fairness that was commended by friend and foe alike.

As Burr bade goodbye to the Senate over which he has presided for 4 years, this is what he said. And I close with his words because I think they may well have been written for a moment like this. He said:

> This House is a sanctuary; a citadel of law, of order, and of liberty, and it is here --
>
> It is here --
>
> in this exalted refuge -- here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God averts, its expiring agonies will be witnessed on this floor.

135 CONG. REC. S13,349-56 (Oct. 13, 1989). The Senate went on to adopt the leadership amendment by a voice vote. *See id.* at S13,557.

TITLE IV
ADDITIONAL PROVISIONS TO IMPROVE FISCAL PROCEDURES

BILLS PROVIDING NEW SPENDING AUTHORITY

SEC. 401.[576] (a) CONTROLS ON LEGISLATION PROVIDING SPENDING AUTHORITY.[577] -- It shall not be in order[578] in either the House of Representatives or the Senate to consider any bill, joint resolution,

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[576] Section 401 is codified as amended at 2 U.S.C. § 651.

[577] Note that section 401(d) provides significant exceptions to these controls. *See infra* pp. 206-210.

[578] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

amendment,[579] motion, or conference report,[580] as reported[581] to its House which provides new spending authority[582] described in subsection (c)(2) (A)[583] or (B),[584] unless that bill, resolution, conference report, or amendment also provides that such new spending authority as described in subsection (c)(2) (A)[585] or (B)[586] is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.[587]

(b) Legislation Providing Entitlement

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[579] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303).

[580] Section 13207(a)(1)(F)(i) of the Budget Enforcement Act struck the words "bill, resolution, or conference report" here and inserted "bill, joint resolution, amendment, motion, or conference report." *See infra* p. 640.

[581] *Cf. supra* note 488 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

[582] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. supra* note 494 (regarding section 311(a)).

[583] *See infra* p. 203.

[584] *See infra* p. 203.

Section 13207(a)(1)(F)(ii) of the Budget Enforcement Act struck the parenthetical "(or any amendment which provides such new spending authority)" that used to appear here. *See infra* p. 640.

[585] *See infra* p. 203.

[586] *See infra* p. 203.

[587] *See, e.g.,* 132 Cong. Rec. S10,693 (Aug. 7, 1986) (bill providing spending authority within the jurisdiction of the Committee on Armed Services subject to section 401(a)).

On whether something is "provided in appropriation Acts," see generally *infra* note 609.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

AUTHORITY.[588] --

(1) It shall not be in order[589] in either the House of Representatives or the Senate to consider any bill, joint resolution, amendment,[590] motion, or conference report, as reported[591] to its House[592] which provides new spending authority[593] described in subsection (c)(2)(C)[594] which is to become effective before the first day of the fiscal year which begins during the calendar year in which such bill or resolution is reported.

(2) If any committee of the House of Representatives or the Senate reports any bill or resolution which provides

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[588] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see infra* p. 204). For a discussion of language that ensures that authority will not constitute entitlement authority, see *infra* note 609.

Note that section 401(d) provides significant exceptions to this subsection. *See infra* pp. 206-210.

[589] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

[590] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303).

[591] *Cf. supra* note 488 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

[592] Section 13207(a)(1)(G)(i) of the Budget Enforcement Act struck the words "bill or resolution" here and inserted "bill, joint resolution, amendment, motion, or conference report, as reported to its House." *See infra* p. 640.

[593] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. supra* note 494 (regarding section 311(a)).

[594] *See infra* pp. 204-205. Section 3(9) refers to section 401(c)(2)(C) to define the term "entitlement authority." *See supra* p. 18.

Section 13207(a)(1)(G)(ii) of the Budget Enforcement Act struck the parenthetical "(or any amendment which provides such new spending authority)" that used to appear here. *See infra* p. 640.

new spending authority described in subsection (c)(2)(C)[595] which is to become effective during a fiscal year and the amount of new budget authority[596] which will be required for such fiscal year if such bill or resolution is enacted as so reported exceeds the appropriate allocation of new budget authority reported under section 302(b)[597] in connection with the most recently agreed to concurrent resolution on the budget for such fiscal year, such bill or resolution shall then be referred to the Committee on Appropriations of that House with instructions to report it, with the committee's recommendations, within 15 calendar days (not counting any day on which that House is not in session) beginning with the day following the day on which it is so referred. If the Committee on Appropriations of either House fails to report a bill or resolution referred to it under this paragraph within such 15-day period, the committee shall automatically be discharged from further consideration of such bill or resolution and such bill or resolution shall be placed on the appropriate calendar.

(3) The Committee on Appropriations of each House shall have jurisdiction to report any bill or resolution referred to it under paragraph (2)[598] with an amendment which limits the total amount of new spending authority provided in such bill or resolution.

(c) DEFINITIONS. --

(1) For purposes of this section, the term "new spending authority" means spending authority not provided

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[595] *See infra* pp. 204-205. Section 3(9) refers to section 401(c)(2)(C) to define the term "entitlement authority." *See supra* p. 18.

[596] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[597] *See supra* pp. 71-73.

[598] *See supra* pp. 201-202.

by law on the effective date of this Act,[599] including any increase in or addition to spending authority provided by law on such date.

(2) For purposes of paragraph (1), the term "spending authority"[600] means authority (whether temporary or permanent) --

(A) to enter into contracts under which the United States is obligated to make outlays,[601] the budget authority[602] for which is not provided in advance by appropriation Acts;[603]

(B) to incur indebtedness (other than indebtedness incurred under chapter 31[604] of title 31 of the United States Code) for the repayment of which the United States is liable, the budget authority[605] for which is not provided in advance by appropriation

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[599] Section 211 of Gramm-Rudman-Hollings changed this word from "section" to "Act." *See infra* p. 347. As originally written, the reference was clear: section 905(c) indicates that the effective date for section 401 was January 19, 1976. *See infra* pp. 304-305 & note 920. As amended, however, the intent is ambiguous. Section 905(a) provides that the effective date of the Act was the date of enactment, July 12, 1974, except as provided in section 905, which has the specific reference to (among other sections) section 401. *See infra* p. 304. Note that the drafters of Gramm-Rudman-Hollings made clear when they meant the date of enactment of Gramm-Rudman-Hollings instead of the date of enactment of the Congressional Budget Act. *See* section 401(d)(3)(A)(ii) *infra* p. 209.

[600] Note that section 406(a), regarding off-budget agencies, programs, and activities (*see infra* p. 221), requires that certain items shall be included in spending authority.

[601] Section 3(1) defines "outlays." *See supra* p. 11.

[602] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[603] For a discussion of whether something is "provided in advance by appropriation Acts," see generally *infra* note 609.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

[604] Chapter 31 comprises 31 U.S.C. § § 3101-3129 (1988).

[605] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

Acts;[606]

(C)[607] to make payments (including loans and grants), the budget authority[608] for which is not provided for in advance by appropriations Acts,[609] to

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[606] For a discussion of whether something is "provided in advance by appropriation Acts," see generally *infra* note 609.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

[607] Section 3(9) refers to this subparagraph to define the term "entitlement authority." *See supra* p. 18. Note that section 250(c)(18) of Gramm-Rudman-Hollings defines certain mandatory appropriated accounts as entitlements for purposes of Gramm-Rudman-Hollings. *See infra* p. 378.

[608] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[609] Even if an amendment creates benefits for qualifying individuals, it will not create entitlement authority within the meaning of section 401(c)(2)(C) if it also provides that "no payments shall be made except subject to appropriations." 130 CONG. REC. S7,070-71, S7,108, S7,110 (1984) (parliamentary inquiry of Sen. Cohen); Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database). This is so even if the language creating the benefits says "an individual shall be entitled." *Id.*

The Parliamentarian's office has advised that the following language would ensure that a program would be subject to appropriations, and therefore not an entitlement under section 401(c)(2)(C):

> In any fiscal year the administrator of this program shall limit the value of any benefits conferred by this program to an amount not in excess of the appropriation for such fiscal year and if the requirements of this program exceed the limitations set herein the benefits shall be reduced to the extent necessary to comply with the provisions of this subsection.

Senate Precedent PRL19840613-002 (June 13, 1984) (LEGIS, Rules database). For an example of an application of language similar to this, see, *e.g.*, National and Community Service Act of 1989, § 250(a), S. 1430, 101st Cong. 2d Sess., 136 CONG. REC. S1,672, S1,684 (Feb. 27, 1990) (§ 432A(c) of the material proposed to be inserted).

To avoid a point of order caused by the creation of new entitlement authority, however, it is not necessarily sufficient to include language that the payments must come out of an appropriated account; the language must make the payments themselves subject to appropriations. *See* 130 CONG. REC. S7,107, S7,109-10 (June 13, 1984) (parliamentary inquiry and statement of Sen. Domenici). Some thus refer to "appropriated entitlements" that fall within the meaning of section 401(c)(2)(C). (*See, e.g., infra* note 1162 (listing "APPROPRIATED ENTITLEMENTS AND MANDATORIES").) Even though the Government pays such appropriated entitlements out of appropriated funds, annual appropriations do not truly control them. That the entitlement is paid from appropriated funds

(continued...)

any person or government if, under the provisions of the law containing such authority, the United States is obligated to make such payments to persons or governments who meet the requirements established by such law;

(D) to forgo the collection by the United States of proprietary offsetting receipts, the budget authority[610] for which is not provided in advance by appropriation Acts[611] to offset such forgone receipts; and

(E) to make payments by the United States (including loans, grants, and payments from revolving funds) other than those covered by subparagraph (A),[612] (B),[613] (C),[614] or (D),[615] the budget authority[616] for which is not provided in advance by appro-

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[609] (...continued)
cannot, without more, remove the entitlement from the definition of section 401(c)(2)(C), for, as the Constitution requires, "No Money shall be drawn from the Treasury, but in consequence of Appropriations made by Law." U.S. CONST. art. I, § 9, cl. 7. Thus, all entitlements provide for appropriations, either implicitly or explicitly.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. The text of 1 U.S.C. § 105 (1988) (*see supra* note 30) deals with regular appropriations bills. Section 401(c)(2)(C) thus refers to authority that regular appropriations acts do not control.

[610] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[611] For a discussion of whether something is "provided in advance by appropriation Acts," see generally *supra* note 609.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

[612] *See supra* p. 203.

[613] *See supra* p. 203.

[614] *See supra* p. 204-205.

[615] *See supra* p. 205.

[616] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

priation Acts.[617]

Such term does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government.

(d) EXCEPTIONS. --

(1) Subsections (a)[618] and (b)[619] shall not apply to new spending authority[620] if the budget authority[621] for outlays[622] which will result from such new spending authority is derived --

(A) from a trust fund[623] established by the Social Security Act[624] (as in effect on the date of the enactment of this Act[625]); or

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[617] For a discussion of whether something is "provided in advance by appropriation Acts," see generally *supra* note 609.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

[618] *See supra* pp. 199-200.

[619] *See supra* pp. 200-202.

[620] Section 401(c) defines "new spending authority." *See supra* pp. 202-206.

[621] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[622] Section 3(1) defines "outlays." *See supra* p. 11.

[623] That is:
-- the Federal Old-Age and Survivors Insurance Trust Fund,
-- the Federal Disability Insurance Trust Fund,
-- the Unemployment Trust Fund,
-- the Federal Hospital Insurance Trust Fund, and
-- the Federal Supplementary Medical Insurance Trust Fund.

[624] The Social Security Act is codified as amended at 42 U.S.C. § § 301-1397e (1988).

[625] That date is July 12, 1974, the date of enactment of the Congressional Budget Act. Note that the drafters of Gramm-Rudman-Hollings made clear when they meant the date of enactment of Gramm-Rudman-Hollings instead of the date of enactment of the Congressional Budget Act. *See* section 401(d)(3)(A)(ii) *infra* p. 209.

(B) from any other trust fund,[626] 90 percent or more of the receipts of which consist or will consist of amounts (transferred from the general fund of the Treasury) equivalent to amounts of taxes (related to the purposes for which such outlays[627] are or will be made) received in the Treasury under specified provisions of the Internal Revenue Code of 1954.[628]

(2) Subsections (a)[629] And (b)[630] shall not apply to new spending authority[631] which is an amendment to or extension of the State and Local Fiscal Assistance Act of 1972,[632] or a continuation of the program of fiscal assistance to State and local governments provided by that Act, to the extent so provided in the bill or resolution providing such authority.

(3) Subsections (a)[633] and (b)[634] shall not apply to new spending authority[635] to the extent that --

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[626] For example, the Highway Trust Fund.

[627] Section 3(1) defines "outlays." *See supra* p. 11.

[628] The Internal Revenue Code of 1954 is codified as amended at 26 U.S.C. §§ 1-9602 (1988).

[629] *See supra* pp. 199-200.

[630] *See supra* pp. 200-202.

[631] Section 401(c) defines "new spending authority." *See supra* pp. 202-206.

[632] The State and Local Fiscal Assistance Act of 1972, regarding revenue sharing, was codified as amended at 31 U.S.C. §§ 6701-6724. The Consolidated Omnibus Budget Reconciliation Act of 1985 repealed these statutes. Pub. L. No. 99-272, § 14001(a)(1), 100 Stat. 82, 327 (Apr. 7, 1986).

[633] *See supra* pp. 199-200.

[634] *See supra* pp. 200-202.

[635] Section 401(c) defines "new spending authority." *See supra* pp. 202-206.

(A) the outlays[636] resulting therefrom are made by an organization which is

(i) a mixed-ownership Government corporation (as defined in section 201 of the Government Corporation Control Act[637]), or

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[636] Section 3(1) defines "outlays." *See supra* p. 11.

[637] Section 201 of the Government Corporation Control Act is codified as amended at 31 U.S.C. § 9101(2) (1988), which states:

> **§ 9101. Definitions**
>
> In this chapter --
>
> . . .
>
> (2) "mixed-ownership Government corporation" means --
>
> (A) Amtrak.
>
> (B) the Central Bank for Cooperatives.
>
> (C) the Federal Deposit Insurance Corporation.
>
> (D) the Federal Home Loan Banks.
>
> (E) the Federal Intermediate Credit Banks.
>
> (F) the Federal Land Banks.
>
> (G) the National Credit Union Administration Central Liquidity Facility.
>
> (H) the Regional Banks for Cooperatives.
>
> (I) the Rural Telephone Bank when the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).
>
> (J) the United States Railway Association.
>
> (K) [t]he Financing Corporation.

31 U S.C. § 9101(2) (1988).

Of these mixed-ownership Government corporations, only the Rural Telephone Bank, the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the

(continued...)

(ii) a wholly owned Government corporation (as defined in section 101 of such Act[638])

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[637] (...continued)
Regional Banks for Cooperatives, and the Federal Land Banks are "specifically exempted by law from compliance with any or all of the provisions of" the Government Corporation Control Act. *See* 31 U.S.C. § 9108(d)(2) (1988).

[638] Section 101 of the Government Corporation Control Act is codified as amended at 31 U.S.C. § 9101(3) (1988), which states:

> **§ 9101. Definitions**
>
> In this chapter --
>
> . . .
>
> (3) "wholly owned Government corporation" means --
>
> (A) the Commodity Credit Corporation.
>
> (B) the Export-Import Bank of the United States.
>
> (C) the Federal Crop Insurance Corporation.
>
> (D) Federal Prison Industries, Incorporated.
>
> (E) the Federal Savings and Loan Insurance Corporation.
>
> (F) the Government National Mortgage Association.
>
> (G) the Overseas Private Investment Corporation.
>
> (H) the Pennsylvania Avenue Development Corporation.
>
> (I) the Pension Benefit Guaranty Corporation.
>
> (J) the Rural Telephone Bank until the ownership, control, and operation of the Bank are converted under section 410(a) of the Rural Electrification Act of 1936 (7 U.S.C. 950(a)).
>
> (K) the Saint Lawrence Seaway Development Corporation.
>
> (L) the Secretary of Housing and Urban Development when carrying out duties and powers related to the Federal Housing Administration Fund.

(continued...)

which is specifically exempted by law from compliance with any or all of the provisions of that Act,[639] as of the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985;[640] or

(B) the outlays[641] resulting therefrom consist exclusively of the proceeds of gifts or bequests made to the United States for a specific purpose.

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[638](...continued)

(M) the Tennessee Valley Authority.

31 U.S.C. § 9101(3) (1988).

Of these wholly-owned Government corporations, only the Rural Telephone Bank "is specifically exempted by law from compliance with any or all of the provisions of" the Government Corporation Control Act. *See* 31 U.S.C. § 9108(d)(2) (1988).

[639] Of the Government corporations cited, only the Rural Telephone Bank, the Federal Intermediate Credit Banks, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, and the Federal Land Banks are "specifically exempted by law from compliance with any or all of the provisions of" the Government Corporation Control Act. *See* 31 U.S.C. § 9108(d)(2) (1988).

[640] That is, December 12, 1985. Section 211 of Gramm-Rudman-Hollings added the words ", as of the date of enactment of the Balanced Budget and Emergency Deficit Control Act of 1985" to clarify which corporations section 401 covered.

[641] Section 3(1) defines "outlays." *See supra* p. 11.

LEGISLATION PROVIDING NEW CREDIT AUTHORITY

SEC. 402.[642] (a) CONTROLS ON LEGISLATION PROVIDING NEW CREDIT AUTHORITY. -- **It shall not be in order[643] in either the House of Representatives or the Senate to consider any bill, joint resolution, amendment,[644] motion, or conference report,[645] as reported[646] to its House,[647] which provides new credit authority[648] described in subsection (b)(1),[649] unless that bill, resolution, conference report, or amendment also provides that such new credit authority is to be effective for any fiscal year only to such extent or in such amounts as are provided in**

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[642] Section 402 is codified as amended at 2 U.S.C. § 652.

Section 212 of Gramm-Rudman-Hollings (*see infra* p. 348) repealed the original section 402 and substituted what is now section 402. For the text of the original section 402, see *infra* note 653 (at the end of the section).

[643] Congressional Budget Act prohibitions are not self-enforcing, and require points of order from the floor for their enforcement. *Cf. supra* note 273 (regarding section 303(a)).

[644] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303).

[645] Section 13207(a)(1)(H)(i) of the Budget Enforcement Act struck the words "bill, resolution, or conference report" here and inserted "bill, joint resolution, amendment, motion, or conference report." *See infra* p. 640.

[646] *Cf. supra* note 488 (by virtue of the words "as reported," a point of order will not lie under section 311(a) against a deficit-neutral bill that has been amended by an amendment that reduces revenues below the revenue floor).

[647] Section 13207(a)(1)(H)(ii) of the Budget Enforcement Act struck the words "or any amendment" here. *See infra* p. 640.

[648] The Congressional Budget Act makes no exception for violations of negligible amounts. *Cf. supra* note 494 (regarding section 311(a)).

[649] This appears so in the original; it should read "(b)." *See infra* p. 212.

appropriation Acts.[650]

(b) DEFINITION. -- For purposes of this Act, the term "new credit authority" means credit authority (as defined in section 3(10)[651] of this Act) not provided by law on the effective date of this section,[652] including any increase in or addition to credit authority provided by law on such date.[653]

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[650] For a discussion of whether something is "provided in advance by appropriation Acts," see generally *supra* note 609.

Section 3(5) defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

[651] Section 3(10) states: "The term 'credit authority' means authority to incur direct loan obligations or to incur primary loan guarantee commitments." *See supra* p. 19.

[652] Section 275(a)(2)(B) of Gramm-Rudman-Hollings provides that this section became effective on February 1, 1986. *See infra* p. 607.

[653] Section 212 of Gramm-Rudman-Hollings (*see infra* p. 348) repealed the original section 402 and substituted what is now section 402. As originally enacted in 1974, section 402 dealt with the reporting of authorizing legislation:

> REPORTING OF AUTHORIZING LEGISLATION
>
> SEC. 402. (a) REQUIRED REPORTING DATE. -- Except as otherwise provided in this section, it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.
>
> (b) EMERGENCY WAIVER IN THE HOUSE. -- If the Committee on Rules of the House of Representatives determines that emergency conditions require a waiver of subsection (a) with respect to any bill or resolution, such committee may report, and the House may consider and adopt, a resolution waiving the application of subsection (a) in the case of such a bill or resolution.
>
> (c) WAIVER IN THE SENATE. --
>
> (1) The committee of the Senate which reports any bill or resolution may, at or after the time it reports such bill or resolution, report a resolution to the Senate (A) providing for the waiver of subsection (a) with respect to such bill or resolution, and (b) stating the reasons why the waiver is necessary. The resolution shall then be referred to the Committee on the Budget of the Senate. That

(continued...)

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[653](...continued)

committee shall report the resolution to the Senate, within 10 days after the resolution is referred to it (not counting any day on which the Senate is not in session) beginning with the day following the day on which it is so referred accompanied by that committee's recommendations and reasons for such recommendations with respect to the resolution. If the committee does not report the resolution within such 10-day period, it shall automatically be discharged from further consideration of the resolution and the resolution shall be placed on the calendar.

(2) During the consideration of any such resolution, debate shall be limited to one hour, to be equally divided between, and controlled by, the majority leader and the minority leader or their designees, and the time on any debatable motion or appeal shall be limited to 20 minutes, to be equally divided between, and controlled by, the mover and the manager of the resolution. In the event the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. Such leaders, or either of them, may, from the time under their control on the passage such resolution, allot additional time to any Senator during the consideration of any debatable motion or appeal. No amendment to the resolution is in order.

(3) If, after the Committee on the Budget has reported (or been discharged from further consideration of) the resolution, the Senate agrees to the resolution, then subsection (a) of this section shall not apply with respect to that bill or resolution referred to in the resolution.

(d) CERTAIN BILLS AND RESOLUTIONS RECEIVED FROM OTHER HOUSE. -- Notwithstanding the provisions of subsection (a), if under that subsection it is in order in the House of Representatives to consider a bill or resolution of the House, then it shall be in order to consider a companion or similar bill or resolution of the Senate; and if under that subsection it is in order in the Senate to consider a bill or resolution of the Senate, then it shall be in order to consider a companion or similar bill of the House of Representatives.

(e) EXCEPTIONS. --

(1) Subsection (a) shall not apply with respect to new spending authority described in section 401(c)(2)(C).

(2) Subsection (a) shall not apply with respect to new budget authority authorized in a bill or resolution for any provision of the Social Security Act if such bill or resolution also provides new spending authority described in section 401(c)(2)(C) which, under section 401(d)(1)(A), is excluded from the application of section 401(b).

(continued...)

ANALYSIS BY CONGRESSIONAL BUDGET OFFICE

SEC. 403.[654] (a) The Director of the Congressional Budget Office shall, to the extent practicable, prepare for each bill or resolution of a public character reported by any committee of the House of Representatives or the Senate (except the Committee on Appropriations of each House), and submit to such committee --

(1) an estimate of the costs which would be incurred in carrying out such bill or resolution in the fiscal year in which it is to become effective and in each of the 4 fiscal years following such fiscal year, together with the basis for each such estimate;

(2)[655] an estimate of the cost which would be incurred by State and local governments in carrying out or complying with any significant bill or resolution in the fiscal year in which it is to become effective and in each of the four fiscal years following such fiscal year, together with the basis for each such estimate;

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[653] (...continued)

(f) STUDY OF EXISTING SPENDING AUTHORITY AND PERMANENT APPROPRIATIONS. -- The Committees on Appropriations of the House of Representatives and the Senate shall study on a continuing basis those provisions of law, in effect on the effective date of this section, which provide spending authority or permanent budget authority. Each committee shall, from time to time, report to its House its recommendations for terminating or modifying such provisions.

[654] Section 403 is codified as amended at 2 U.S.C. § 653 (1988).

[655] The State and Local Cost Estimate Act of 1981 added paragraph (2). Pub. L. No. 97-108, § 2(a)(3), 95 Stat. 1510 (Dec. 23, 1981).

(3) a comparison of the estimates of costs described in paragraphs (1)[656] and (2),[657] with any available estimates of costs made by such committee or by any Federal agency; and

(4)[658] a description of each method for establishing a Federal financial commitment contained in such bill or resolution.

The estimates, comparison, and description[659] so submitted shall be included in the report accompanying such bill or resolution if timely submitted to such committee before such report is filed.

(b)[660] For purposes of subsection (a)(2),[661] the term "local government" has the same meaning as in section 103[662] of the Intergovernmental Cooperation Act of 1968.

(c)[663] For purposes of subsection (a)(2),[664] the term "signifi-

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[656] *See supra* p. 214.

[657] *See supra* p. 214.

[658] Section 213(a) of Gramm-Rudman-Hollings added paragraph (4). *See infra* p. 349.

[659] Section 213(b) of Gramm-Rudman-Hollings added "description" to this list. *See infra* p. 349.

[660] The State and Local Cost Estimate Act of 1981 added subsections (b) and (c). Pub. L. No. 97-108, § 2(a)(7), 95 Stat. 1510 (Dec. 23, 1981).

[661] *See supra* p. 214.

[662] Section 103 of the Intergovernmental Cooperation Act of 1968 is codified, as amended, at 31 U.S.C. § 6501 (1988), which states (in relevant part):

> (6) "local government" means a unit of general local government, a school district, or other special district established under State law.

31 U.S.C. § 6501(6) (1988).

[663] The State and Local Cost Estimate Act of 1981 added subsections (b) and (c). Pub. L. No. 97-108, § 2(a)(7), 95 Stat. 1510 (Dec. 23, 1981).

cant bill or resolution" is defined as any bill or resolution which in the judgment of the Director of the Congressional Budget Office is likely to result in an annual cost to State and local governments of $200,000,000 or more, or is likely to have exceptional fiscal consequences for a geographic region or a particular level of government.

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[664] (...continued)
[664] *See supra* p. 214.

JURISDICTION OF APPROPRIATIONS COMMITTEES

SEC. 404. (a) AMENDMENT OF HOUSE RULES. -- Clause 2 of rule XI of the Rules of the House of Representatives is amended by redesignating paragraph (b) as paragraph (e) and by inserting after paragraph (a) the following new paragraphs:

> **"(b) Rescission of appropriations contained in appropriations Acts (referred to in section 105[665] of title 1, United States Code).**
>
> **"(c) The amount of new spending authority described in section 401(c)(2) (A)[666] and (B)[667] of the Congressional Budget Act of 1974 which is to be effective for a fiscal year.**
>
> **"(d) New spending authority described in section 401(c)(2)(C)[668] of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2)[669] of that Act (but subject to the provisions of section 401(b)(3)[670] of that**

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[665] Section 105 of title 1 of the United States Code provides:

> The style and title of all Acts making appropriations for the support of Government shall be as follows: "An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year)."

1 U.S.C. § 105 (1988).

[666] *See supra* p. 203.

[667] *See supra* p. 203.

[668] *See supra* pp. 204-205.

[669] *See supra* pp. 201-202.

[670] *See supra* p. 202.

Act)."

(b) Amendment of Senate Rules. -- Subparagraph (c) of paragraph 1 of rule XXV of the Standing Rules of the Senate is amended to read as follows:

> "(c) Committee on Appropriations, to which committee shall be referred all proposed legislation, messages, petitions, memorials, and other matters relating to the following subjects:
>
> > "1. Except as provided in subparagraph (r), appropriation of the revenue for the support of the Government.
> >
> > "2. Rescission of appropriations contained in appropriation Acts (referred to in section 105[671] of title 1, United States Code).
> >
> > "3. The amount of new spending authority described in section 401(c)(2) (A)[672] and (B)[673] of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2)[674] of that Act (but subject to the provisions of section 401(b)(3)[675] of that Act).

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[671] Section 105 of title 1 of the United States Code provides:

> The style and title of all Acts making appropriations for the support of Government shall be as follows: "An Act making appropriations (here insert the object) for the year ending September 30 (here insert the calendar year)."

1 U.S.C. § 105 (1988).

[672] *See supra* p. 203.

[673] *See supra* p. 203.

[674] *See supra* pp. 201-202.

[675] *See supra* p. 202.

"4. New advance spending authority described in section 401(c)(2)(C)[676] of the Congressional Budget Act of 1974 provided in bills and resolutions referred to the committee under section 401(b)(2)[677] of that Act (but subject to the provisions of section 401(b)(3)[678] of that Act)."

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[676] *See supra* pp. 204-205.

[677] *See supra* pp. 201-202.

[678] *See supra* p. 202.

STUDY BY THE GENERAL ACCOUNTING OFFICE OF FORMS OF FEDERAL FINANCIAL COMMITMENT THAT ARE NOT REVIEWED ANNUALLY BY CONGRESS

SEC. 405.[679] The General Accounting Office shall study those provisions of law which provide spending authority as described by section 401(c)(2)[680] and which provide permanent appropriations, and report to the Congress its recommendations for the appropriate form of financing for activities or programs financed by such provisions not later than eighteen months after the effective date of this section. Such report shall be revised from time to time.

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[679] Section 214 of Gramm-Rudman-Hollings added sections 405-407. *See infra* 350. Section 405 is codified at 2 U.S.C. § 654 (1988).

[680] *See supra* pp. 203-206.

OFF-BUDGET AGENCIES, PROGRAMS, AND ACTIVITIES

SEC. 406.[681] (a) Notwithstanding any other provision of law, budget authority,[682] credit authority,[683] and estimates of outlays[684] and receipts for activities of the Federal budget which are off-budget immediately prior to the date of enactment of this section, not including activities of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds,[685] shall be included[686] in a budget submitted pursuant to section 1105[687] of title 31, United States Code, and in a concurrent resolution on the budget reported pursuant to section 301[688] or section 304[689] of this Act and shall be considered, for

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[681] Section 214 of Gramm-Rudman-Hollings added sections 405-407. *See infra* 350. Section 406 is codified at 2 U.S.C. § 655 (1988).

[682] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[683] Section 3(10) defines "credit authority." *See supra* p. 19.

[684] Section 3(1) defines "outlays." *See supra* p. 11.

[685] The Social Security Act creates these trust funds at 42 U.S.C. § § 401(a) & 401(b) (1988), respectively.

[686] Despite this effort to include off-budget Government entities in the budgetary totals, Congress has subsequently created new off-budget Government entities to refinance the Farm Credit System and the insurance system for the savings and loan industry. The Agricultural Credit Act of 1987 created the Farm Credit System Financial Assistance Corporation, the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987 created the Financing Corporation for that industry, and the Financial Institutions Reform, Recovery and Enforcement Act of 1989 created the Resolution Funding Corporation, also for that industry. Similarly, the Omnibus Budget Reconciliation Act of 1989 took the Postal Service out of the budget. Finally, section 13301 of the Budget Enforcement Act completed the removal of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (that is, Social Security) from the budget. *See infra* p. 659.

[687] Section 1105, entitled "Budget contents and submission to Congress," deals with the executive department's budget submission. *See infra* pp. 698-708.

[688] *See supra* pp. 46-69.

purposes of this Act, budget authority,[690] outlays,[691] and spending authority[692] in accordance with definitions set forth in this Act.

(b) All receipts and disbursements of the Federal Financing Bank with respect to any obligations which are issued, sold, or guaranteed by a Federal agency shall be treated as a means of financing such agency for purposes of section 1105[693] of title 31, United States Code, and for purposes of this Act.

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[689] (...continued)
[689] *See supra* pp. 93-94.

[690] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[691] Section 3(1) defines "outlays." *See supra* p. 11.

[692] Section 401(c)(2) defines "spending authority." *See supra* pp. 203-206.

[693] Section 1105, entitled "Budget contents and submission to Congress," deals with the executive department's budget submission. *See infra* pp. 698-708.

MEMBER USER GROUP

SEC. 407.[694] The Speaker of the House of Representatives, after consulting with the Minority Leader of the House, may appoint a Member User Group for the purpose of reviewing budgetary scorekeeping rules and practices of the House and advising the Speaker from time to time on the effect and impact of such rules and practices.

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[694] Section 214 of Gramm-Rudman-Hollings added sections 405-407. *See infra* 350. Section 407 is codified at 2 U.S.C. § 656 (1988).

TITLE V
CREDIT REFORM[695]

SEC. 500. SHORT TITLE.

This title may be cited as the "Federal Credit Reform Act of 1990".[696]

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[695] Section 13201(a) of the Budget Enforcement Act created the new title V on credit reform. *See infra* p. 629. Public Law 97-258 repealed sections 501-504. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, 96 Stat. 877, 1082 (Sept. 13, 1982). What used to be section 501 was codified in section 1102 of title 31 and what used to be section 503 was codified in section 1552 of title 31. Section 13201(a) of the Budget Enforcement Act (which created the new title V on credit reform) repealed the title heading and sections 505 and 506. *See infra* p. 629.

[696] The statement of managers accompanying the conference report on the Budget Enforcement Act explains generally the credit reform provisions:

> VII. CREDIT REFORM
>
> *Current law*
>
> The credit programs of the Federal Government are displayed in the budget on a cash accounting basis. Cash accounting overstates the real economic cost of direct loan programs and understates the real economic costs of loan guarantee programs in the year loans are made.
>
> *House bill*
>
> The House bill provides for a revised system of accounting for Federal credit programs that requires the appropriation of budget authority equal to the cost to the government, which is the estimated net present value of the cash flows associated with federal direct loan and loan guarantee programs. The revised accounting would also apply to any modifications in the costs of outstanding direct loans or loan guarantees. An exception from the requirement for an appropriation is provided for existing entitlement credit programs and the credit activities of the Commodity Credit Corporation. The credit program cost estimates will not include administrative expenses, but these expenses will be displayed in the program account as a separate subaccount on a cash basis. All of the residual cash flows associated with direct loan and loan guarantee programs not included in the cost to the government estimate would be non-budgetary and treated as means of financing.

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[696] (...continued)

The House bill gives the Director of the Office of Management and Budget (OMB) the authority to make credit cost estimates for the Executive Branch. The OMB Director could also delegate such authority to any Federal agency through written guidelines. The Director of the OMB would have access to necessary data from the Federal agencies and has a mandate to work with the Congressional Budget Office to improve cost estimates through an annual review process. The House bill authorizes the President to establish the necessary non-budgetary accounts and the Secretary of the Treasury to borrow from, receive from, lend to, or pay to such amounts as may be appropriate to these non-budgetary accounts. These transactions will be subject to the Antideficiency Act. The House bill also authorizes the funds necessary to implement this change in credit accounting.

The House bill makes credit reform effective starting in fiscal year 1992 and provides that direct loans and loan guarantees made before this date shall be reflected in the budget on a cash basis. The House also provides permanent indefinite authority to liquidate the loan obligations and guarantee commitments made prior to October 1, 1991.

The House bill also calls for a study by the OMB and the CBO concerning whether the accounting for Federal deposit insurance programs should be made on a cash basis, on the same basis as loan guarantees, or on some other basis.

Finally, the House bill would no longer require the inclusion of credit authority amounts in budget resolutions, allocations, costs estimates, or any other document related to the Budget Act.

Senate amendment

The Senate amendment states that the purposes of credit reform is to measure accurately the costs of Federal credit programs, place the cost of credit programs on a budgetary basis equivalent to other Federal spending, encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries, coordinate accounting and review of credit programs by CBO and OMB, and enhance the Congressional oversight of credit programs.

The Senate amendment defines "Federal agency", "direct loan", "direct loan obligation", "loan guarantee", "loan guarantee commitment", "cost to the government", "subsidy account", "financing account", and "liquidating account". Of particular note, the "cost to the government" was defined as the estimated long-term net present value of a loan guarantee. The Senate bill emphasized the variety of cash flows to be estimated by listing the specific contractual cash flows to be measured and the variations to the contractual cash flows that could occur.

The Senate amendment made in the responsibility of the Director of OMB to estimate the costs to the government of federal credit programs, establish reporting requirements by the agencies, and monitor agency performance with respect to credit programs. In developing the estimates, the

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[696](...continued)
Senate mandates coordination with the CBO and consultation with the Congress. Any changes to the estimating criteria are to be reported to the Congress. CBO and OMB are to study the differences in long-term administrative costs for credit programs vis-a-vis grant programs.

The Senate amendment requires that the executive budget submission include both direct loan obligation and loan guarantee commitment levels, and the estimated cost to the government of these credit levels. No direct loan or loan guarantee or modification of an outstanding loan could be made without appropriations in advance.

The Senate Amendment lays out the responsibilities of each Federal Agency to credit timely submissions of credit data, make annual requests for credit appropriations, use due diligence in carrying out responsibilities for credit programs under the new credit cost controls, and maintaining the reserves of the financing accounts. [] And applied the 302(f)(2) point of order to credit limitations in the Senate for fiscal year 1991. The point of order would sunset with the effective date of credit reform. The financing accounts were made exempt from sequestration.

Section 1107 lays out the budgetary treatment of federal credit programs. The cost to the government of direct loan and loan guarantee programs will be carried in the appropriate budget function. The financing accounts will be treated as a means of financing, but their aggregated activity will be displayed in the budget documents in a function known as "credit financing activities". The section makes it clear that the financing activities are off-budget and not subject to budget act points of order.

Section 1108 provided the authority necessary for appropriations of budget authority for the cost to the government. The head of each Federal agency has authority to issue notes to the Secretary of the Treasury should the resources of the financing accounts prove insufficient to meet the obligations of the financing account. The Secretary of the Treasury has authority set the terms and conditions of such borrowings. The Senate bill authorizes app[r]opriations for the funding needs of the liquidating accounts and authorized appropriations for the salaries and expenses necessary to carry out credit reform.

Deposit insurance programs and other government programs are excluded from credit reform. OMB and CBO are directed to study the applicability of credit reform to the excluded programs and to Government Sponsored Enterprises.

Nothing in the Senate bill is to be construed as limiting existing mandatory credit authorities nor establishing a limit on existing credit programs. Nor does the Senate bill contemplate changing the existing authorities for the liquidation of obligations made prior to enactment of credit reform. Excess funds in the liquidating accounts are to be transferred to the Treasury on at least an annual basis.

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[696] (...continued)

Credit reform is made effective for fiscal year 1992. OMB is to submit an explanation of its credit reform methodology with its annual budget submission; CBO is to include the cost to the government for all reported bills.

The Senate amendment defines a government sponsored enterprise (GSE) to emphasize that to qualify as a GSE and thereby escape budget act treatment, GSE must: have a federal charter; be privately owned; be controlled by a board of directors elected by the owners; and be a financial institution with powers to make loans, guarantee loans, issue debt, or guarantee the debt of others. Further, a GSE could not exercise powers that are reserved to the Government (eg. taxing powers or regulating interstate commerce), commit the Government financially, or employ federal civil servants.

The Senate amendment creates a new point of order that will lie against legislation that did not provide a subsidy appropriation for the cost to the government of credit activities and applied the 302(f)(2) point of order to credit limitations in the Senate for fiscal year 1991. The 302(f)(2) point of order will sunset with the effective date of credit reform. The financing accounts were made exempt from sequestration.

Conference agreement

The conference agreement indicates that the purpose of credit accounting reform is to measure more accurately the costs of Federal direct loan and loan guarantee programs, to place the cost of those programs on a basis equivalent to other spending, to encourage more efficient delivery of Federal assistance, and to improve the allocation of resources between credit and other spending programs. The conference agreement also substantially accepts the definitions in the Senate bill.

The conference agreement requires that, starting with fiscal year 1992, the budget cost of credit programs be the net present value of the long-term costs to the Government, excluding administrative costs and incidental effects on governmental receipts and outlays. All of the other cash flows resulting from credit programs will be treated as means of financing and included in non-budgetary financing accounts. The cash flows resulting from direct loan obligations and loan guarantee commitments made prior to fiscal year 1992 will be reflected in the budget on a cash flow basis.

The conference agreement provides that the Director of the Office of Management and Budget will be responsible for coordinating credit cost estimates for the executive branch and may delegate that authority to other agencies based upon written guidelines. The Director of the Office of Management and Budget is to consult with the Director of the Congressional Budget Office in developing guidelines for credit cost estimates and in reviewing and improving those estimates.

The conference agreement requires the appropriation of new budget authority to cover the cost of direct loan and loan guarantee programs before

(continued...)

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[696] (...continued)
new assistance can be provided. An exception to this requirement is provided for entitlement credit programs (such as the guaranteed student loan program and veteran's home loan guaranty program)and for the credit programs of the Commodity Credit Corporation. The agreement also provides that budget authority must be available to cover the cost of modifying any outstanding direct loan or loan guarantee. Administrative expenses for credit programs will continue to be counted on a cash flow basis, but displayed in a separate subaccount within the account for the credit program.

In a few cases, the cost to government of a loan or guarantee may be zero or negative. In such case, it is still necessary for appropriations bills to provide specific authority before loans could be made. Providing such authority will generate an off-setting receipt (negative budget authority and outlays) which would be credited to the appropriations committees and count against discretionary spending limits.

The conference agreement provides that, if initial estimates of the costs of credit activity are determined to be incorrect, reestimates are recorded on the budget as soon as possible. These reestimates will take the form of payments from the treasury to the financing accounts or vice versa. The reestimate is discounted back to the time when the loan was disbursed; the discounted portion is charged to the program account (as a mandatory) and the rest is charged to net interest.

The conference agreement provides authority for the Secretary of the Treasury to conduct the transactions necessary to maintain the non-budgetary financing accounts.

As part of the transition provisions, new credit authority is made subject to a 302 point of order in the Senate in fiscal year 1991. However, the agreement sunsets this point of order in both houses in 1992.

If excesses were to develop in the financing accounts, the agreement presumes that these excesses would revert to the treasury. These excesses do not include balances necessary to maintain adequate reserves, achieve mandated capital levels, or preserve the mutuality of certain credit programs.

The financing accounts are made subject to the Antideficiency Act. However, Federal agencies will continue to administer and operate direct loan and loan guarantee programs as they do now. Permanent indefinite authority is provided to make any payments required to liquidate direct loan obligations and loan guarantee commitments made prior to fiscal year 1992. The agreement provides an authorization to cover the administrative expenses of implementing credit accounting reform. Finally, the activities of Federal insurance programs are excluded from credit accounting reform, but the Director of the Office of Management and Budget and the Director of the Congressional Budget are required to study whether the accounting for Federal deposit insurance programs should be a cash basis, on the same basis as loan guarantees, or on a different basis.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,161-66 (1990).

SEC. 501. PURPOSES.

The purposes of this title are to --

(1) measure more accurately the costs[697] of Federal credit programs;

(2) place the cost of credit programs on a budgetary basis equivalent to other Federal spending;

(3) encourage the delivery of benefits in the form most appropriate to the needs of beneficiaries; and

(4) improve the allocation of resources among credit programs and between credit and other spending programs.[698]

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[697] Section 502(5) defines "cost." *See infra* p. 233.

[698] Section 13201(a) of the Budget Enforcement Act created the new title V on credit reform, including section 501. *See infra* p. 629. Public Law 97-258 repealed what used to be section 501. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, 96 Stat. 877, 1082 (Sept. 13, 1982). Section 501 was codified in section 1102 of title 31. As originally enacted in 1974, section 501 read as follows:

FISCAL YEAR TO BEGIN ON OCTOBER 1

SEC. 501. Section 237 of the Revised Statutes (31 U.S.C. 1020) is amended to read as follows:

"SEC. 237. (a) The fiscal year of the Treasury of the United States, in all matters of accounts, receipts, expenditures, estimates, and appropriations --

"(1) shall, through June 30, 1976, commence on July 1 of each year and end on June 30 of the following year; and

"(2) shall, beginning on October 1, 1976, commence on October 1 of each year and end on September 30 of the following year.

(continued...)

SEC. 502. DEFINITIONS.[699]

For purposes of this title --

(1) The term "direct loan" means a disbursement of funds by the Government to a non-Federal borrower under a contract that requires the repayment of such funds with or without interest. The term includes the purchase of, or participation in, a loan made by another lender. The term does not include the acquisition of a federally guaranteed loan in satisfaction of default claims or the price support loans of the Commodity Credit Corporation.

(2) The term "direct loan obligation" means a binding agreement by a Federal agency to make a direct loan[700] when specified conditions are fulfilled by the borrower.

(3) The term "loan guarantee" means any guarantee, insurance, or other pledge with respect to the payment of all or a part of the principal or interest on any debt obligation of a non-Federal borrower to a non-Federal lender, but does not include the insurance of deposits, shares, or other withdrawable accounts in financial institutions.

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[698](...continued)

> "(b) All accounts of receipts and expenditures required by law to be published annually shall be prepared and published for each fiscal year as established by subsection (a)."

[699] For legislative history of section 502, see *infra* note 722 (at the end of this section).

[700] Section 502(1) defines "direct loan." *See supra* p. 232.

(4) The term "loan guarantee commitment" means a binding agreement by a Federal agency to make a loan guarantee[701] when specified conditions are fulfilled by the borrower, the lender, or any other party to the guarantee agreement.

(5)(A) The term "cost" means the estimated long-term cost to the Government of a direct loan[702] or loan guarantee,[703] calculated on a net present value basis, excluding administrative costs and any incidental effects on governmental receipts or outlays.[704]

(B) The cost of a direct loan[705] shall be the net present value, at the time when the direct loan is disbursed, of the following cash flows:

(i) loan disbursements;

(ii) repayments of principal; and

(iii) payments of interest and other payments by or to the Government over the life of the loan after adjusting for estimated defaults, prepayments, fees, penalties and other recoveries.

(C) The cost of a loan guarantee[706] shall be the net present value when a guaranteed loan is disbursed of the cash flow from --

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[701] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[702] Section 502(1) defines "direct loan." *See supra* p. 232.

[703] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[704] Section 3(1) defines "budget outlays." *See supra* p. 11.

[705] Section 502(1) defines "direct loan." *See supra* p. 232.

[706] Section 502(3) defines "loan guarantee." *See supra* p. 232.

(i) estimated payments by the Government to cover defaults and delinquencies, interest subsidies, or other payments, and

(ii) the estimated payments to the Government including origination and other fees, penalties and recoveries.

(D) Any Government action that alters the estimated net present value of an outstanding direct loan[707] or loan guarantee[708] (except modifications within the terms of existing contracts or through other existing authorities) shall be counted as a change in the cost[709] of that direct loan or loan guarantee. The calculation of such changes shall be based on the estimated present value of the direct loan or loan guarantee at the time of modification.

(E) In estimating net present values, the discount rate shall be the average interest rate on marketable Treasury securities of similar maturity to the direct loan[710] or loan guarantee[711] for which the estimate is being made.

(6) The term "credit program account" means the budget account into which an appropriation to cover the cost[712] of a direct loan[713] or loan guarantee[714] program is made and from which such cost is disbursed to the

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[707] Section 502(1) defines "direct loan." *See supra* p. 232.

[708] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[709] Section 502(5) defines "cost." *See supra* p. 233.

[710] Section 502(1) defines "direct loan." *See supra* p. 232.

[711] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[712] Section 502(5) defines "cost." *See supra* p. 233.

[713] Section 502(1) defines "direct loan." *See supra* p. 232.

[714] Section 502(3) defines "loan guarantee." *See supra* p. 232.

financing account.[715]

(7) The term "financing account" means the non-budget account or accounts associated with each credit program account[716] which holds balances, receives the cost[717] payment from the credit program account, and also includes all other cash flows to and from the Government resulting from direct loan obligations[718] or loan guarantee commitments[719] made on or after October 1, 1991.

(8) The term "liquidating account" means the budget account that includes all cash flows to and from the Government resulting from direct loan obligations[720] or loan guarantee commitments[721] made prior to October 1, 1991. These accounts shall be shown in the budget on a cash basis.

(9) The term "Director" means the Director of the Office of Management and Budget.[722]

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[715] Section 502(7) defines "financing account." *See infra* p. 235.

[716] Section 502(6) defines "credit program account." *See supra* p. 234.

[717] Section 502(5) defines "cost." *See supra* p. 233.

[718] Section 502(2) defines "direct loan obligation." *See supra* p. 232.

[719] Section 502(4) defines "loan guarantee commitment." *See supra* p. 233.

[720] Section 502(2) defines "direct loan obligation." *See supra* p. 232.

[721] Section 502(4) defines "loan guarantee commitment." *See supra* p. 233.

[722] Section 13201(a) of the Budget Enforcement Act created the new title V on credit reform, including section 502. *See infra* p. 629. Public Law 97-258 repealed what used to be section 502. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, 96 Stat. 877, 1082 (Sept. 13, 1982). As originally enacted in 1974, section 502 read as follows:

TRANSITION TO NEW FISCAL YEAR

SEC. 502. (a) As soon as practicable, the President shall prepare and

(continued...)

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[722](...continued)
submit to the Congress--

(1) after consultation with the Committees on Appropriations of the House of Representatives and the Senate, budget estimates for the United States Government for the period commencing July 1, 1976, and ending on September 30, 1976, in such form and detail as he may determine; and

(2) proposed legislation he considers appropriate with respect to changes in law necessary to provide authorizations of appropriations for that period.

(b) The Director of the Office of Management and Budget shall provide by regulation, order, or otherwise for the orderly transition by all departments, agencies, and instrumentalities of the United States Government and the government of the District of Columbia from the use of the fiscal year in effect on the date of enactment of this Act to the use of the new fiscal year prescribed by section 237(a)(2) of the Revised Statutes. The Director shall prepare and submit to the Congress such additional proposed legislation as he considers necessary to accomplish this objective.

(c) The Director of the Office of Management and Budget and the Director of the Congressional Budget Office jointly shall conduct a study of the feasibility and advisability of submitting the Budget or portions thereof, and enacting new budget authority or portions thereof, for a fiscal year during the regular session of the Congress which begins in the year preceding the year in which such fiscal year begins. The Director of the Office of Management and Budget and the Director of the Congressional Budget Office each shall submit a report of the results of the study conducted by them, together with his own conclusions and recommendations, to the Congress not later than 2 years after the effective date of this subsection.

SEC. 503. OMB AND CBO ANALYSIS, COORDINATION, AND REVIEW.[723]

(a) In General. -- For the executive branch, the Director[724] shall be responsible for coordinating the estimates required by this title. The Director shall consult with the agencies that administer direct loan[725] or loan guarantee[726] programs.

(b) Delegation. -- The Director[727] may delegate to agencies authority to make estimates of costs.[728] The delegation of authority shall be based upon written guidelines, regulations, or criteria consistent with the definitions in this title.

(c) Coordination With the Congressional Budget Office. -- In developing estimation guidelines, regulations, or criteria to be used by Federal agencies, the Director[729] shall consult with the Director of the Congressional Budget Office.

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[723] For legislative history of section 503, see *infra* note 738.

[724] Section 502(9) defines "Director" as "the Director of the Office of Management and Budget." *See supra* p. 235.

[725] Section 502(1) defines "direct loan." *See supra* p. 232.

[726] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[727] Section 502(9) defines "Director" as "the Director of the Office of Management and Budget." *See supra* p. 235.

[728] Section 502(5) defines "cost." *See supra* p. 233.

[729] Section 502(9) defines "Director" as "the Director of the Office of Management and Budget." *See supra* p. 235.

(d) IMPROVING COST[730] ESTIMATES. -- The Director[731] and the Director of the Congressional Budget Office shall coordinate the development of more accurate data on historical performance of direct loan[732] and loan guarantee[733] programs. They shall annually review the performance of outstanding direct loans and loan guarantees to improve estimates of costs. The Office of Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate the development and improvement of estimates of costs.

(e) HISTORICAL CREDIT PROGRAM COSTS.[734] -- The Director[735] shall review, to the extent possible, historical data and develop the best possible estimates of adjustments that would convert aggregate historical budget data to credit reform accounting.

(f) ADMINISTRATIVE COSTS.[736] -- The Director[737] and the Director of the Congressional Budget Office shall each analyze and report to Congress on differences in long-term administrative costs for credit programs versus grant programs by January 31, 1992. Their reports shall recommend to Congress any changes, if necessary, in the treatment of administrative

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[730] Section 502(5) defines "cost." *See supra* p. 233.

[731] Section 502(9) defines "Director" as "the Director of the Office of Management and Budget." *See supra* p. 235.

[732] Section 502(1) defines "direct loan." *See supra* p. 232.

[733] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[734] Section 502(5) defines "cost." *See supra* p. 233.

[735] Section 502(9) defines "Director" as "the Director of the Office of Management and Budget." *See supra* p. 235.

[736] Section 502(5) defines "cost." *See supra* p. 233.

[737] Section 502(9) defines "Director" as "the Director of the Office of Management and Budget." *See supra* p. 235.

costs under credit reform accounting.[738]

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[738] Section 13201(a) of the Budget Enforcement Act created the new title V on credit reform, including section 503. *See infra* p. 629. Public Law 97-258 repealed what used to be section 503. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, 96 Stat. 877, 1082 (Sept. 13, 1982). Section 503 was codified in section 1552 of title 31. As originally enacted in 1974, section 503 read as follows:

> ACCOUNTING PROCEDURES
>
> SEC. 503. (a) Subsection (a)(1) of the first section of the Act entitled "An Act to simplify accounting, facilitate the payment of obligations, and for other purposes", approved July 25, 1956, as amended (31 U.S.C. 701) is amended to read as follows:
>
> > "(1) The obligated balance shall be transferred, at the time specified in subsection (b)(1) of this section, to an appropriation account of the agency or subdivision thereof responsible for the liquidation of the obligation, in which account shall be merged the amounts so transferred from all appropriation accounts for the same general purposes; and".
>
> (b) Subsection (b) of such section is amended to read as follows:
>
> > "(b)(1) Any obligated balance referred to in subsection (a)(1) of this section shall be transferred as follows:
> >
> > > "(A) for any fiscal year or years ending on or before June 30, 1976, on that June 30 which falls in the first month of June which occurs twenty-four months after the end of such fiscal year or years; and
> > >
> > > "(B) for the period commencing on July 1, 1976, and ending on September 30, 1976, and for any fiscal year commencing on or after October 1, 1976, on September 30 of the second fiscal year following that period or the fiscal years or years as the case may be, for which the appropriation is available for obligation.
> >
> > "(2) The withdrawals required by subsection (a)(2) of this section shall be made --
> >
> > > "(A) for any fiscal year ending on or before June 30, 1976, not later than September 30 of the fiscal year immediately following the fiscal year in which the period of availability for obligation expires; and

(continued...)

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[738](...continued)

"(B) for the period commencing on July 1, 1976, and ending on September 30, 1976, and for any fiscal year commencing on or after October 1, 1976, not later than November 15 following such period or fiscal year, as the case may be, in which the period of availability for obligation expires."

SEC. 504. BUDGETARY TREATMENT.[739]

(a) PRESIDENT'S BUDGET. -- Beginning with fiscal year 1992, the President's budget shall reflect the costs[740] of direct loan[741] and loan guarantee[742] programs. The budget shall also include the planned level of new direct loan obligations[743] or loan guarantee commitments[744] associated with each appropriations request.

(b) APPROPRIATIONS REQUIRED. -- Notwithstanding any other provision of law, new direct loan obligations[745] may be incurred and new loan guarantee commitments[746] may be made for fiscal year 1992 and thereafter only to the extent that --

(1) appropriations of budget authority[747] to cover their costs[748] are made in advance;

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[739] For legislative history of section 504, see *infra* note 780 (at the end of this section).

[740] Section 502(5) defines "cost." *See supra* p. 233.

[741] Section 502(1) defines "direct loan." *See supra* p. 232.

[742] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[743] Section 502(2) defines "direct loan obligation." *See supra* p. 232.

[744] Section 502(4) defines "loan guarantee commitment." *See supra* p. 233.

[745] Section 502(2) defines "direct loan obligation." *See supra* p. 232.

[746] Section 502(4) defines "loan guarantee commitment." *See supra* p. 233.

[747] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[748] Section 502(5) defines "cost." *See supra* p. 233.

(2) a limitation on the use of funds otherwise available for the cost of a direct loan[749] or loan guarantee[750] program is enacted; or

(3) authority is otherwise provided in appropriation Acts.

(c) EXEMPTION FOR MANDATORY PROGRAMS. -- Subsection (b) shall not apply to a direct loan[751] or loan guarantee[752] program that --

(1) constitutes an entitlement[753] (such as the guaranteed student loan program or the veterans' home loan guaranty program); or

(2) all existing credit programs of the Commodity Credit Corporation on the date of enactment of this title.

(d) BUDGET ACCOUNTING. --

(1) The authority to incur new direct loan obligations,[754] make new loan guarantee commitments,[755] or directly or indirectly alter the costs[756] of outstanding direct

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[749] Section 502(1) defines "direct loan." *See supra* p. 232.

[750] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[751] Section 502(1) defines "direct loan." *See supra* p. 232.

[752] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[753] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see supra* p. 204).

[754] Section 502(2) defines "direct loan obligation." *See supra* p. 232.

[755] Section 502(4) defines "loan guarantee commitment." *See supra* p. 233.

[756] Section 502(5) defines "cost." *See supra* p. 233.

loans[757] and loan guarantees[758] shall constitute new budget authority[759] in an amount equal to the cost of the direct loan or loan guarantee in the fiscal year in which definite authority becomes available or indefinite authority is used. Such budget authority shall constitute an obligation of the credit program account[760] to pay to the financing account.[761]

(2) The outlays[762] resulting from new budget authority[763] for the cost[764] of direct loans[765] or loan guarantees[766] described in paragraph (1) shall be paid from the credit program account[767] into the financing account[768] and recorded in the fiscal year in which the direct loan or the guaranteed loan is disbursed or its costs altered.

(3) All collections and payments of the financing accounts[769] shall be a means of financing.

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[757] Section 502(1) defines "direct loan." *See supra* p. 232.

[758] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[759] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[760] Section 502(6) defines "credit program account." *See supra* p. 234.

[761] Section 502(7) defines "financing account." *See supra* p. 235.

[762] Section 3(1) defines "budget outlays." *See supra* p. 11.

[763] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[764] Section 502(5) defines "cost." *See supra* p. 233.

[765] Section 502(1) defines "direct loan." *See supra* p. 232.

[766] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[767] Section 502(6) defines "credit program account." *See supra* p. 234.

[768] Section 502(7) defines "financing account." *See supra* p. 235.

[769] Section 502(7) defines "financing account." *See supra* p. 235.

(e) MODIFICATIONS. -- A direct loan obligation[770] or loan guarantee commitment[771] shall not be modified in a manner that increases its cost[772] unless budget authority[773] for the additional cost is appropriated, or is available out of existing appropriations or from other budgetary resources.

(f) REESTIMATES. -- When the estimated cost[774] for a group of direct loans[775] or loan guarantees[776] for a given credit program made in a single fiscal year is reestimated in a subsequent year, the difference between the reestimated cost and the previous cost estimate shall be displayed as a distinct and separately identified subaccount in the credit program account[777] as a change in program costs and a change in net interest. There is hereby provided permanent indefinite authority for these reestimates.

(g) ADMINISTRATIVE EXPENSES. -- All funding for an agency's administration of a direct loan[778] or loan guarantee[779] program shall be displayed as distinct and separately identified sub-accounts within the same budget account as the program's

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[770] Section 502(2) defines "direct loan obligation." *See supra* p. 232.

[771] Section 502(4) defines "loan guarantee commitment." *See supra* p. 233.

[772] Section 502(5) defines "cost." *See supra* p. 233.

[773] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[774] Section 502(5) defines "cost." *See supra* p. 233.

[775] Section 502(1) defines "direct loan." *See supra* p. 232.

[776] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[777] Section 502(6) defines "credit program account." *See supra* p. 234.

[778] Section 502(1) defines "direct loan." *See supra* p. 232.

[779] Section 502(3) defines "loan guarantee." *See supra* p. 232.

cost.[780]

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[780] Section 502(5) defines "cost." *See supra* p. 233.

Section 13201(a) of the Budget Enforcement Act created the new title V on credit reform, including section 504. *See infra* p. 629. Public Law 97-258 repealed what used to be section 504. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, 96 Stat. 877, 1082 (Sept. 13, 1982). As originally enacted in 1974, section 504 read as follows:

CONVERSION OF AUTHORIZATIONS OF APPROPRIATIONS

> SEC. 504. Any law providing for an authorization of appropriations commencing on July 1 of a year shall, if that year is any year after 1975, be considered as meaning October 1 of that year. Any law providing for an authorization of appropriations ending on June 30 of a year shall, if that year is any year after 1976, be considered as meaning September 30 of that year. Any law providing for an authorization of appropriations for the fiscal year 1977 or any fiscal year thereafter shall be construed as referring to that fiscal year ending on September 30 of the calendar year having the same calendar year number as the fiscal year number.

SEC. 505. AUTHORIZATIONS.[781]

(a) AUTHORIZATION OF APPROPRIATIONS FOR COSTS.[782] -- There are authorized to be appropriated to each Federal agency authorized to make direct loan obligations[783] or loan guarantee commitments,[784] such sums as may be necessary to pay the cost associated with such direct loan obligations or loan guarantee commitments.

(b) AUTHORIZATION FOR FINANCING ACCOUNTS.[785] -- In order to implement the accounting required by this title, the President is authorized to establish such non-budgetary accounts as may be appropriate.

(c) TREASURY TRANSACTIONS WITH THE FINANCING ACCOUNTS.[786] -- The Secretary of the Treasury shall borrow from, receive from, lend to, or pay to the financing accounts such amounts as may be appropriate. The Secretary of the Treasury may prescribe forms and denominations, maturities, and terms and conditions for the transactions described above. The authorities described above shall not be construed to supercede or override the authority of the head of a Federal agency to administer and operate a direct loan[787] or loan guarantee[788] program. All of the transactions provided in this subsection shall be subject to the provisions of subchapter II of chapter 15 of

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[781] For legislative history of section 505, see *infra* note 794.

[782] Section 502(5) defines "cost." *See supra* p. 233.

[783] Section 502(2) defines "direct loan obligation." *See supra* p. 232.

[784] Section 502(4) defines "loan guarantee commitment." *See supra* p. 233.

[785] Section 502(7) defines "financing account." *See supra* p. 235.

[786] Section 502(7) defines "financing account." *See supra* p. 235.

[787] Section 502(1) defines "direct loan." *See supra* p. 232.

[788] Section 502(3) defines "loan guarantee." *See supra* p. 232.

title 31, United States Code. Cash balances of the financing accounts in excess of current requirements shall be maintained in a form of uninvested funds and the Secretary of the Treasury shall pay interest on these funds.

(d) AUTHORIZATION FOR LIQUIDATING ACCOUNTS.[789] -- If funds in liquidating accounts are insufficient to satisfy the obligations and commitments of said accounts, there is hereby provided permanent, indefinite authority to make any payments required to be made on such obligations and commitments.

(e) AUTHORIZATION OF APPROPRIATIONS FOR IMPLEMENTATION EXPENSES. -- There are authorized to be appropriated to existing accounts such sums as may be necessary for salaries and expenses to carry out the responsibilities under this title.

(f) REINSURANCE. -- Nothing in this title shall be construed as authorizing or requiring the purchase of insurance or reinsurance on a direct loan[790] or loan guarantee[791] from private insurers. If any such reinsurance for a direct loan or loan guarantee is authorized, the cost[792] of such insurance and any recoveries to the Government shall be included in the calculation of the cost.

(g) ELIGIBILITY AND ASSISTANCE. -- Nothing in this title shall be construed to change the authority or the responsibility of a Federal agency to determine the terms and conditions of eligibility for, or the amount of assistance provided by a direct loan[793] or a loan guarantee.[794]

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[789] Section 502(8) defines "liquidating account." *See supra* p. 235.

[790] Section 502(1) defines "direct loan." *See supra* p. 232.

[791] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[792] Section 502(5) defines "cost." *See supra* p. 233.

[793] Section 502(1) defines "direct loan." *See supra* p. 232.

SEC. 506. TREATMENT OF DEPOSIT INSURANCE AND[795] AGENCIES AND OTHER INSURANCE PROGRAMS.[796]

(a) IN GENERAL.[797] --

(1) This title shall not apply to the credit or insurance activities of the Federal Deposit Insurance Corporation, National Credit Union Administration, Resolution

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[794](...continued)

[794] Section 502(3) defines "loan guarantee." *See supra* p. 232.

Section 13201(a) of the Budget Enforcement Act created the new title V on credit reform, including section 505, and repealed what used to be section 505. *See infra* p. 629. Before enactment of the Budget Enforcement Act, section 505 read as follows:

REPEALS

SEC. 505. The following provisions of law are repealed:

(1) the ninth paragraph under the headings "Legislative Establishment", "Senate", of the Deficiency Appropriation Act, fiscal year 1934 (48 Stat. 1022; 2 U.S.C. 66); and

(2) the proviso to the second paragraph under the headings "House of Representatives", "Salaries, Mileage, and Expenses of Members", of the Legislative-Judiciary Appropriation Act, 1955 (68 Stat. 400; 2 U.S.C. 81).

[795] This is so in the original; the word "and" should not be here.

[796] Section 13201(a) of the Budget Enforcement Act created the new title V on credit reform, including section 507, and repealed what used to be section 506. *See infra* p. 629. Before enactment of the Budget Enforcement Act, section 506 read as follows:

TECHNICAL AMENDMENT

SEC. 506. (a) Section 105 of title 1, United States Code, is amended by striking out "June 30" and inserting in lieu thereof "September 30".

(b) The provisions of subsection (a) of this section shall be effective with respect to Acts making appropriations for the support of the Government for any fiscal year commencing on or after October 1, 1976.

[797] This subsection heading is so in the original. It should not be here, as there is no subsection (b).

Trust Corporation, Pension Benefit Guaranty Corporation, National Flood Insurance, National Insurance Development Fund, Crop Insurance, or Tennessee Valley Authority.

(2) The Director[798] and the Director of the Congressional Budget Office shall each study whether the accounting for Federal deposit insurance programs should be on a cash basis on the same basis as loan guarantees,[799] or on a different basis. Each Director shall report findings and recommendations to the President and the Congress on or before May 31, 1991.

(3) For the purposes of paragraph (2), the Office of Management and Budget and the Congressional Budget Office shall have access to all agency data that may facilitate these studies.

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[798] Section 502(9) defines "Director" as "the Director of the Office of Management and Budget." *See supra* p. 235.

[799] Section 502(3) defines "loan guarantee." *See supra* p. 232.

SEC. 507. EFFECT ON OTHER LAWS.[800]

(a) EFFECT ON OTHER LAWS. -- This title shall supersede, modify, or repeal any provision of law enacted prior to the date of enactment of this title to the extent such provision is inconsistent with this title. Nothing in this title shall be construed to establish a credit limitation on any Federal loan or loan guarantee[801] program.

(b) CREDITING OF COLLECTIONS. -- Collections resulting from direct loans[802] obligated or loan guarantees[803] committed prior to October 1, 1991, shall be credited to the liquidating accounts[804] of Federal agencies. Amounts so credited shall be available, to the same extent that they were available prior to the date of enactment of this title, to liquidate obligations arising from such direct loans obligated or loan guarantees committed prior to October 1, 1991, including repayment of any obligations held by the Secretary of the Treasury or the Federal Financing Bank. The unobligated balances of such accounts that are in excess of current needs shall be transferred to the general fund of the Treasury. Such transfers shall be made from time to time but, at least once each year.

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[800] Section 13201(a) of the Budget Enforcement Act created the new title V on credit reform, including section 507. *See infra* p. 629.

[801] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[802] Section 502(1) defines "direct loan." *See supra* p. 232.

[803] Section 502(3) defines "loan guarantee." *See supra* p. 232.

[804] Section 502(8) defines "liquidating account." *See supra* p. 235.

TITLE VI
BUDGET AGREEMENT ENFORCEMENT PROVISIONS[805]

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[805] Section 13111 of the Budget Enforcement Act repealed the original title heading of title VI and added what is now title VI. *See infra* p. 623. As originally enacted in 1974, the title heading for title VI read as follows:

TITLE VI
AMENDMENTS TO
BUDGET AND
ACCOUNTING ACT, 1921

Public Law 97-258 repealed the sections 601-605 and 607 originally enacted in the Congressional Budget Act of 1974. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982). Section 223 of Gramm-Rudman-Hollings repealed the original section 606. *See infra* p. 354. The original sections 601-605 and 607 were codified in sections 1105, 1106, and 1108-1110 of title 31.

The statement of managers accompanying the conference report on the Budget Enforcement Act explains provisions of the new title VI:

> IX. ADDITIONAL CHANGES TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974
>
> *Current law*
>
> The Congressional Budget and Impoundment Control Act of 1974, as amended, provides for the adoption each year of a concurrent resolution on the budget setting forth spending, deficit, and revenue levels. The budget resolution is enforced principally through points of order against legislation violating budget resolution spending, revenue, and deficit levels, and through reconciliation instructions to congressional committees. Budget resolutions include budget levels for three fiscal years, but only the first year levels are binding (i.e., enforceable by points of order).
>
> The budget resolution may not provide for a deficit in excess of the Gramm-Rudman-Hollings deficit target for the fiscal year. There are no other restrictions on congressional discretion in setting budget resolution levels under current law.
>
> Title X of the Act establishes congressional procedures for considering impoundment of funds by the executive branch.
>
> *House bill*

(continued...)

SEC. 601. DEFINITIONS AND POINT OF ORDER.[806]

(a) DEFINITIONS. -- As used in this title and for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985:

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[805] (...continued)

The House bill amends the Congressional Budget Act to establish procedures for enforcing the discretionary spending limits established for fiscal years 1991-1995 through action each year on the budget resolution. Through fiscal year 1995, budget resolutions are required to cover five fiscal years.

The House bill also establishes a procedure for automatic reconciliation instructions to the tax committees should legislation be enacted reducing revenues without an offset.

The House provisions are enacted as temporary amendments to the 1974 Budget Act, generally expiring at the end of fiscal year 1995.

Senate amendment

The Senate amendment also expands 1974 Budget Act enforcement procedures to ensure compliance with the discretionary spending limits and pay-as-you-go requirements to assure that the 5-year, $500 billion deficit reduction plan is implemented and maintained. . . .

The Senate amendment makes permanent changes in the 1974 Budget Act.

Conference agreement

The conference agreement includes a number of budget process changes. It makes temporary changes in the Congressional Budget Act to create 5-year budget resolutions that would be enforced by points of order against exceeding committee allocations for both the first year and the total of the 5 years covered by the budget resolution. Section 601(b) of the conference agreement also creates temporary points of order in the Senate against violating the discretionary spending limits.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,169-70 (1990).

[806] For legislative history of section 601, see *infra* note 821 (at the end of this section).

(1) MAXIMUM DEFICIT AMOUNT.[807] -- The term "maximum deficit amount" means --

(A) with respect to fiscal year 1991, $327,000,000,000;

---

[807] Pursuant to section 253(g) of Gramm-Rudman-Hollings (*see infra* pp. 461-466), the President's budget for fiscal year 1992 revised the targets for fiscal years as follows (in billions of dollars):

year	target
1992	349.8
1993	285.2
1994	157.5
1995	117.3

OFFICE OF MANAGEMENT AND BUDGET, BUDGET OF THE UNITED STATES GOVERNMENT: FISCAL YEAR 1992, pt. 5, at 10 (Feb. 4, 1991).

Before enactment of the Budget Enforcement Act, section 3(7) of the Congressional Budget Act defined the term "maximum deficit amount." (Section 13112(a)(2)(A) of the Budget Enforcement Act repealed the old section 3(7). *See infra* p. 624.) Before enactment of the Budget Enforcement Act, section 3(7) read as follows:

> (7) The term "maximum deficit amount" means --
>
> (A) with respect to the fiscal year beginning October 1, 1985, $171,900,000,000;
>
> (B) with respect to the fiscal year beginning October 1, 1986, $144,000,000,000;
>
> (C) with respect to the fiscal year beginning October 1, 1987, $144,000,000,000;
>
> (D) with respect to the fiscal year beginning October 1, 1988, $136,000,000,000;
>
> (E) with respect to the fiscal year beginning October 1, 1989, $100,000,000,000;
>
> (F) with respect to the fiscal year beginning October 1, 1990, $64,000,000,000;
>
> (G) with respect to the fiscal year beginning October 1, 1991, $28,000,000,000; and
>
> (H) with respect to the fiscal year beginning October 1, 1992, zero.

(B) with respect to fiscal year 1992, $317,000,000,000;

(C) with respect to fiscal year 1993, $236,000,000,000;

(D) with respect to fiscal year 1994, $102,000,000,000; and

(E) with respect to fiscal year 1995, $83,000,000,000;

as adjusted in strict conformance with sections 251,[808] 252,[809] and 253[810] of the Balanced Budget and Emergency Deficit Control Act of 1985.

(2) DISCRETIONARY SPENDING LIMIT.[811] -- The term

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[808] *See infra* pp. 403-429.

[809] *See infra* pp. 433-454.

[810] *See infra* pp. 457-473.

[811] Pursuant to section 251(b) of Gramm-Rudman-Hollings (*see infra* pp. 418-429), the President's budget for fiscal year 1992 revised the discretionary spending limits for fiscal years as follows (in billions of dollars):

	1991	1992	1993	1994	1995
Defense:					
Budget Authority	289.918	291.361	291.480		
Outlays	298.848	295.800	292.523		
International:					
Budget Authority	20.100	20.917	21.643		
Outlays	19.212	19.177	19.802		
Domestic:					
Budget Authority	182.891	198.400	205.791		
Outlays	199.863	211.070	223.216		
Total Discretionary:					
Budget Authority				518.064	524.976
Outlays				536.521	542.509

(continued...)

"discretionary spending limit" means --

(A) with respect to fiscal year 1991 --

(i) for the defense category: $288,918,000,000 in new budget authority[812] and $297,660,000,000 in outlays;[813]

(ii) for the international category: $20,100,000,000 in new budget authority and $18,600,000,000 in outlays; and

(iii) for the domestic category: $182,700,000,000 in new budget authority and $198,100,000,000 in outlays;

(B) with respect to fiscal year 1992 --

(i) for the defense category: $291,643,000,000 in new budget authority and $295,744,000,000 in outlays;

(ii) for the international category: $20,500,000,000 in new budget authority and $19,100,000,000 in outlays; and

(iii) for the domestic category: $191,300,000,000 in new budget authority and $210,100,000,000 in outlays;

(C) with respect to fiscal year 1993 --

---

[811] (...continued)
OFFICE OF MANAGEMENT AND BUDGET, BUDGET OF THE UNITED STATES GOVERNMENT: FISCAL YEAR 1992, pt. 5, at 5-6 (Feb. 4, 1991).

[812] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[813] Section 3(1) defines "outlays." *See supra* p. 11.

(i) for the defense category: $291,785,000,000 in new budget authority and $292,686,000,000 in outlays;

(ii) for the international category: $21,400,000,000 in new budget authority and $19,600,000,000 in outlays; and

(iii) for the domestic category: $198,300,000,000 in new budget authority and $221,700,000,000 in outlays;

(D) with respect to fiscal year 1994, for the discretionary category: $510,800,000,000 in new budget authority and $534,800,000,000 in outlays; and

(E) with respect to fiscal year 1995, for the discretionary category: $517,700,000,000 in new budget authority and $540,800,000,000 in outlays;

as adjusted in strict conformance with section 251[814] of the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) POINT OF ORDER IN THE SENATE ON AGGREGATE ALLOCATIONS FOR DEFENSE, INTERNATIONAL, AND DOMESTIC DISCRETIONARY SPENDING.[815] --

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[814] *See infra* pp. 403-429.

[815] Section 904(c) provides that the Senate may waive or suspend section 601(b) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* pp. 298-299. Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 608.

Note also the provisions for the suspension of title VI under certain circumstances after the declaration of war or a recession pursuant to section 258 of Gramm-Rudman-Hollings. *See infra* pp. 543-556.

(1) Except as provided in paragraph (3),[816] it shall not be in order in the Senate to consider any concurrent resolution on the budget for fiscal year 1992, 1993, 1994, or 1995 (or amendment, motion, or conference report on such a resolution), or any appropriations bill or resolution (or amendment, motion, or conference report on such an appropriations bill or resolution) for fiscal year 1992 or 1993 that would exceed the allocations in this section or the suballocations made under section 602(b) based on these allocations.

(3)[817] [(2)] For purposes of this subsection, the levels of new budget authority[818] and outlays[819] for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

(4)[820] [(3)] This subsection shall not apply if a declaration of war by the Congress is in effect or if a joint resolution pursuant to section 258 of the Balanced Budget and Emergency Deficit Control Act of 1985 has been

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[816] This reference is to the paragraph that appears as paragraph (4) below, which should have been renumbered to appear as paragraph (3).

[817] This is so in the original; this should be paragraph (2).

[818] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[819] Section 3(1) defines "outlays." *See supra* p. 11.

[820] This is so in the original; this should be paragraph (3).

enacted.[821]

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[821] Section 13111 of the Budget Enforcement Act added what is now section 601. *See infra* p. 623. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act, see *supra* note 805.

Public Law 97-258 repealed the section 601 originally enacted in the Congressional Budget Act of 1974. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982). The original section 601-605 and 607 were codified in sections 1105, 1106, and 1108-1110 of title 31. As originally enacted in 1974, section 601 read as follows:

MATTERS TO BE INCLUDED IN PRESIDENT'S BUDGET

SEC. 601. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11) is amended by adding at the end thereof the following new subsections:

"(d) The Budget transmitted pursuant to subsection (a) for each fiscal year shall set forth separately the items enumerated in section 301(a)(1)-(5) of the Congressional Budget Act of 1974.

"(e) The Budget transmitted pursuant to subsection (a) for each fiscal year shall set forth the levels of tax expenditures under existing law for such fiscal year (the tax expenditure budget), taking into account projected economic factors, and any changes in such existing levels based on proposals contained in such Budget. For purposes of this subsection, the terms "tax expenditures" and "tax expenditures budget" have the meanings given to them by section 3(a)(3) of the Congressional Budget Act of 1974.

"(f) The Budget transmitted pursuant to subsection (a) for each fiscal year shall contain --

"(1) a comparison, for the last completed fiscal year, of the total amount of outlays estimated in the Budget transmitted pursuant to subsection (a) for each major program involving uncontrollable outlays and the total amount of outlays made under each such major program during such fiscal year;

"(2) a comparison, for the last completed fiscal year, of the total amount of revenues estimated in the Budget transmitted pursuant to subsection (a) and the total amount of revenues received during such year, and, with respect to each major revenue source, the amount of revenues estimated in the Budget transmitted pursuant to subsection (a) and the amount of revenues received during

(continued...)

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[821](...continued)

such year; and

"(3) an analysis and explanation of the difference between each amount set forth pursuant to paragraphs (1) and (2) as the amount of outlays or revenues estimated in the Budget submitted under subsection (a) for such fiscal year and the corresponding amount set forth as the amount of outlays made or revenues received during such fiscal year.

"(g) The President shall transmit to the Congress, on or before April 10 and July 15 of each year, a statement of all amendments to or revisions in the budget authority requested, the estimated outlays, and the estimated receipts for the ensuing fiscal year set forth in the Budget transmitted pursuant to subsection (a) (including any previous amendments or revisions proposed on behalf of the executive branch) that he deems necessary and appropriate based on the most current information available. Such statement shall contain the effect of such amendments and revisions on the summary data submitted under subsection (a) and shall include such supporting detail as is practicable. The statement transmitted on or before July 15 of any year may be included in the supplemental summary required to be transmitted under subsection (b) during such year. The Budget transmitted to the Congress pursuant to subsection (a) for any fiscal year, or the supporting detail transmitted in connection therewith, shall include a statement of all such amendments and revisions with respect to the fiscal year in progress made before the date of transmission of such Budget.

"(h) The Budget transmitted pursuant to subsection (a) for each fiscal year shall include information with respect to estimates of appropriations for the next succeeding fiscal year for grants, contracts, or other payments under any program for which there is an authorization of appropriations for such succeeding fiscal year and such appropriations are authorized to be included in an appropriation Act for the fiscal year preceding the fiscal year in which the appropriation is to be available for obligation.

"(i) The Budget transmitted pursuant to subsection (a) for each fiscal year, beginning with the fiscal year ending September 30, 1979, shall contain a presentation of budget authority, proposed budget authority, outlays, proposed outlays, and descriptive information in terms of --

"(1) a detailed structure of national needs which shall be used to reference all agency missions

(continued...)

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[821](...continued)

and programs;

"(2) agency missions; and

"(3) basic programs.

To the extent practicable, each agency shall furnish information in support of its budget requests in accordance with its assigned missions in terms of Federal functions and subfunctions, including mission responsibilities of component organizations, and shall relate its programs to agency missions."

SEC. 602. COMMITTEE ALLOCATIONS AND ENFORCEMENT.[822]

(a) COMMITTEE SPENDING ALLOCATIONS. --

(1) HOUSE OF REPRESENTATIVES. --

(A) ALLOCATION AMONG COMMITTEES. -- The joint explanatory statement accompanying a conference report on a budget resolution shall include allocations, consistent with the resolution recommended in the conference report, of the appropriate levels (for each fiscal year covered by that resolution and a total for all such years) of --

(i) total new budget authority,[823]

(ii) total entitlement authority,[824] and

---

[822] Section 13111 of the Budget Enforcement Act added what is now section 602. *See infra* p. 623. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act, see *supra* note 805 (at the beginning of title VI).

Public Law 97-258 repealed the section 602 originally enacted in the Congressional Budget Act of 1974. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982). The original sections 601-605 and 607 were codified in sections 1105, 1106, and 1108-1110 of title 31. As originally enacted in 1974, section 602 read as follows:

MIDYEAR REVIEW

> SEC. 602. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended by striking out "on or before June 1 of each year, beginning with 1972" and inserting in lieu thereof "on or before July 15 of each year".

[823] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[824] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see supra* p. 204).

(iii) total outlays;[825]

among each committee of the House of Representatives that has jurisdiction over legislation providing or creating such amounts.

(B) NO DOUBLE COUNTING. -- Any item allocated to one committee of the House of Representatives may not be allocated to another such committee.

(C) FURTHER DIVISION OF AMOUNTS. -- The amounts allocated to each committee for each fiscal year, other than the Committee on Appropriations, shall be further divided between amounts provided or required by law on the date of filing of that conference report and amounts not so provided or required. The amounts allocated to the Committee on Appropriations for each fiscal year shall be further divided between discretionary and mandatory amounts or programs, as appropriate.

(2) SENATE ALLOCATION AMONG COMMITTEES. -- The joint explanatory statement accompanying a conference report on a budget resolution shall include an allocation, consistent with the resolution recommended in the conference report, of the appropriate levels of --

(A) total new budget authority;[826]

(B) total outlays;[827] and

(C) social security outlays;[828]

among each committee of the Senate that has jurisdiction over legislation providing or creating such amounts.

(3) AMOUNTS NOT ALLOCATED. -- (A) In the House of Representatives, if a committee receives no allocation of new budget authority,[829] entitlement authority,[830] or outlays,[831] that committee shall be deemed to have received an allocation equal to zero for new budget authority, entitlement authority, or outlays.

(B) In the Senate, if a committee receives no allocation of new budget authority,[832] outlays,[833] or social security outlays,[834] that committee shall be deemed to have received an allocation equal to zero for new budget authority, outlays, or social security outlays.

(b) SUBALLOCATIONS BY COMMITTEES. --

(1) SUBALLOCATIONS BY APPROPRIATIONS COMMITTEES. -- As soon as practicable after a budget resolution is agreed to, the Committee on Appropriations of each House (after consulting with the Committee on Appropriations of the

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[828] Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 132.

[829] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[830] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see supra* p. 204).

[831] Section 3(1) defines "outlays." *See supra* p. 11.

[832] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[833] Section 3(1) defines "outlays." *See supra* p. 11.

[834] Section 301(a)(6) implicitly defines the term "social security outlays" as "outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act." *See supra* note 132.

other House) shall suballocate each amount allocated to it for the budget year under subsection (a)(1)(A) or (a)(2) among its subcommittees. Each Committee on Appropriations shall promptly report to its House suballocations made or revised under this paragraph.

(2) SUBALLOCATIONS BY OTHER COMMITTEES OF THE SENATE. -- Each other committee of the Senate to which an allocation under subsection (a)(2) is made in the joint explanatory statement may subdivide each amount allocated to it under subsection (a) among its subcommittees or among programs over which it has jurisdiction and shall promptly report any such suballocations to the Senate. Section 302(c) shall not apply in the Senate to committees other than the Committee on Appropriations.

(c) APPLICATION OF SECTION 302(f) TO THIS SECTION. -- In fiscal years through 1995, reference in section 302(f) to the appropriate allocation made pursuant to section 302(b) for a fiscal year shall, for purposes of this section, be deemed to be a reference to any allocation made under subsection (a) or any sub-allocation made under subsection (b), as applicable, for the fiscal year of the resolution or for the total of all fiscal years made by the joint explanatory statement accompanying the applicable concurrent resolution on the budget. In the House of Representatives, the preceding sentence shall not apply with respect to fiscal year 1991.

(d) APPLICATION OF SUBSECTIONS (a) AND (b) TO FISCAL YEARS 1992 TO 1995. -- In the case of concurrent resolutions on the budget for fiscal years 1992 through 1995, allocations shall be made under subsection (a) instead of section 302(a) and shall be made under subsection (b) instead of section 302(b). For those fiscal years, all references in sections 302(c), (d), (e), (f), and (g) to section 302(a) shall be deemed to be to subsection (a) (including revisions made under section 604) and all such references to section 302(b) shall be deemed to be to subsection (b) (including revisions made under section 604)..

(e) Pay-as-You-Go Exception in the House. [(1)][835] -- Section 302(f)(1) and, after April 15 of any calendar year section 303(a), shall not apply to any bill, joint resolution, amendment thereto, or conference report thereon if, for each fiscal year covered by the most recently agreed to concurrent resolution on the budget --

(1)[836] the enactment of such bill or resolution as reported;

(2)[837] the adoption and enactment of such amendment; or

(3)[838] the enactment of such bill or resolution in the form recommended in such conference report,

would not increase the deficit for any such fiscal year, and, if the sum of any revenue increases provided in legislation already enacted during the current session (when added to revenue increases, if any, in excess of any outlay[839] increase provided by the legislation proposed for consideration) is at least as great as the sum of the amount, if any, by which the aggregate level of Federal revenues should be increased as set forth in that concurrent resolution and the amount, if any, by which revenues are to be increased pursuant to pay- as-you-go procedures under section 301(b)(8) if included in that concurrent resolution.

(2) Revised allocations. --

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[835] The original lacks this initial paragraph number, but the presence of paragraph (2) below makes it apparent that this should be "(1)." The subparagraphs of this paragraph now numbered (1), (2), and (3), should be redesignated (A), (B), and (C).

[836] The presence of paragraph (2) below makes it apparent that this should be "(A)."

[837] The presence of paragraph (2) below makes it apparent that this should be "(B)."

[838] The presence of paragraph (2) below makes it apparent that this should be "(C)."

[839] Section 3(1) defines "outlays." *See supra* p. 11.

(A) As soon as practicable after Congress agrees to a bill or joint resolution that would have been subject to a point of order under section 302(f)(1) but for the exception provided in paragraph (1), the chairman of the Committee on the Budget of the House of Representatives may file with the House appropriately revised allocations under section 302(a) and revised functional levels and budget aggregates to reflect that bill.

(B) such revised allocations, functional levels, and budget aggregates shall be considered for the purposes of this Act as allocations, functional levels, and budget aggregates contained in the most recently agreed to concurrent resolution on the budget.

SEC. 603. CONSIDERATION OF LEGISLATION BEFORE ADOPTION OF BUDGET RESOLUTION FOR THAT FISCAL YEAR.[840]

(a) ADJUSTING SECTION [602][841] ALLOCATION OF DISCRETIONARY SPENDING. -- If a concurrent resolution on the budget is not adopted by April 15, the chairman of the Committee on the Budget of the House of Representatives shall submit to the House, as soon as practicable, a section 602(a) allocation to the Committee on Appropriations consistent with the discretionary spending limits contained in the most recent budget submitted by the President under section 1105(a) of title 31, United States Code. Such allocation shall include the full allowance specified under section 251(b)(2)(E)(i) of the Balanced Budget and

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[840] Section 13111 of the Budget Enforcement Act added what is now section 603. *See infra* p. 623. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act, see *supra* note 805 (at the beginning of title VI).

Public Law 97-258 repealed the section 603 originally enacted in the Congressional Budget Act of 1974. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982). The original sections 601-605 and 607 were codified in sections 1105, 1106, and 1108-1110 of title 31. As originally enacted in 1974, section 603 read as follows:

> FIVE-YEAR BUDGET PROJECTIONS
>
> SEC. 603. Section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended --
>
> (1) by inserting after "ensuing fiscal year" in paragraph (5) "and projections for the four fiscal years immediately following the ensuing fiscal year";
>
> (2) by striking out "such year" in paragraph (5) and inserting in lieu thereof "such years"; and
>
> (3) by inserting after "ensuing fiscal year" in paragraph (6) "and projections for the four fiscal years immediately following the ensuing fiscal year".

[841] This section number reference is missing from the original, but the first sentence of the section makes clear the intent that this reference be to section 602.

Emergency Deficit Control Act of 1985.

(b) As soon as practicable after a section 602(a) allocation is submitted under this section, the Committee on Appropriations shall make suballocations and promptly report those suballocations to the House of Representatives.

SEC. 604. RECONCILIATION DIRECTIVES REGARDING PAY-AS-YOU-GO REQUIREMENTS.[842]

(a) INSTRUCTIONS TO EFFECTUATE PAY-AS-YOU-GO IN THE HOUSE OF REPRESENTATIVES. -- If legislation providing for a net reduction in revenues in any fiscal year (that, within the same measure, is not fully offset in that fiscal year by reductions in direct spending) is enacted, the Committee on the Budget of the House of Representatives may report, within 15 legislative days during a Congress, a pay-as-you-go reconciliation directive in the form of a concurrent resolution --

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[842] Section 13111 of the Budget Enforcement Act added what is now section 604. *See infra* p. 623. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act, see *supra* note 805 (at the beginning of title VI).

Public Law 97-258 repealed the section 604 originally enacted in the Congressional Budget Act of 1974. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982). The original sections 601-605 and 607 were codified in sections 1105, 1106, and 1108-1110 of title 31. As originally enacted in 1974, section 604 read as follows:

ALLOWANCES FOR SUPPLEMENTAL BUDGET AUTHORITY AND UNCONTROLLABLE OUTLAYS

SEC. 604. Section 201(a) of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is further amended --

(1) by striking out "and" at the end of paragraph (11);

(2) by striking out the period at the end of paragraph (12) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(13) an allowance for additional estimated expenditures and proposed appropriations for the ensuing fiscal year, and an allowance for unanticipated uncontrollable expenditures for the ensuing fiscal year."

(1) specifying the total amount by which revenues sufficient to eliminate the net deficit increase resulting from that legislation in each fiscal year are to be changed; and

(2) directing that the committees having jurisdiction determine and recommend changes in the revenue law, bills, and resolutions to accomplish a change of such total amount.

(b) CONSIDERATION OF PAY-AS-YOU-GO RECONCILIATION LEGISLATION IN THE HOUSE OF REPRESENTATIVES. -- In the House of Representatives, subsections (b) through (d) of section 310 shall apply in the same manner as if the reconciliation directive described in subsection (a) were a concurrent resolution on the budget.

SEC. 605. APPLICATION OF SECTION 311; POINT OF ORDER.[843]

(a) Application of Section 311(a). -- (1) In the House of Representatives, in the application of section 311(a)(1) to any bill, resolution, amendment, or conference report, reference in section 311 to the appropriate level of total budget authority[844] or total budget outlays[845] or appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal year and to the total of the appropriate level for that year and the 4 succeeding years.

(2) In the Senate, in the application of section 311(a)(2)[846] to any bill, resolution, motion, or conference report, reference in section 311 to the appropriate level of total revenues set forth in the most recently agreed to concurrent resolution on the budget for a fiscal year shall be deemed to be a reference to the appropriate level for that fiscal year and to the total of the appropriate levels for that year and the 4 succeeding years.

(b) Maximum Deficit Amount Point of Order in the Senate. -- After Congress has completed action on a concurrent resolution on the budget, it shall not be in order in the Senate to consider any bill, resolution, amendment, motion, or conference report that would result in a deficit for the first fiscal year covered by that resolution that exceeds the maximum deficit

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[843] For legislative history of section 605, see *infra* note 847 (at the end of this section).

[844] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[845] Section 3(1) defines "outlays." *See supra* p. 11.

[846] This should read 311(a).

amount specified for such fiscal year in section 601(a).[847]

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[847] *See supra* p. 252.

Section 13111 of the Budget Enforcement Act added what is now section 605. *See infra* p. 623. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act, see *supra* note 805 (at the beginning of title VI).

Before enactment of the Budget Enforcement Act, the Congressional Budget Act addressed this subject, sometimes called the "MDA point of order," in section 311(a), which used to read as follows:

> NEW BUDGET AUTHORITY, NEW SPENDING AUTHORITY, AND REVENUE LEGISLATION MUST BE WITHIN APPROPRIATE LEVELS
>
> SEC. 311. (a) LEGISLATION SUBJECT TO POINT OF ORDER. -- Except as provided by subsection (b), after the Congress has completed action on a concurrent resolution on the budget for a fiscal year, it shall not be in order in either the House of Representatives or the Senate to consider any bill, resolution, or amendment providing new budget authority for such fiscal year, providing new entitlement authority effective during such fiscal year, or reducing revenues for such fiscal year, or any conference report on any such bill or resolution, if --
>
> (1) the enactment of such bill or resolution as reported;
>
> (2) the adoption and enactment of such amendment; or
>
> (3) the enactment of such bill or resolution in the form recommended in such conference report,
>
> would cause the appropriate level of total budget authority or total budget outlays set forth in the most recently agreed to concurrent resolution on the budget for such fiscal year to be exceeded, or would cause revenues to be less than the appropriate level of total revenues set forth in such concurrent resolution *or, in the Senate, would otherwise result in a deficit for such fiscal year that --*
>
> *(A) for fiscal year 1989 or any subsequent fiscal year, exceeds the maximum deficit amount specified for such fiscal year in section 3(7); and*
>
> *(B) for fiscal year 1988 or 1989, exceeds the amount of the estimated deficit for such fiscal year based on laws and regulations in effect on January 1 of the calendar year in which such fiscal year begins as measured using the budget baseline specified in section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 minus $23,000,000,000 for fiscal year 1988 or $36,000,000,000 for fiscal year 1989;*
>
> except to the extent that paragraph (1) of section 301(i) or section 304(b), as the case may be, does not apply by reason of paragraph (2) of such subsection.

(continued...)

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[847](...continued)

(emphasis added).

Section 13112(a)(10) of the Budget Enforcement Act struck the italicized portion of what used to be section 311(a) (as well as the clause that followed it). *See infra* p. 625. (Section 13112(a)(10) of the Budget Enforcement Act substituted another clause providing an exception for wartime. *See supra* pp. 147-156.)

Note that whereas section 311(a) appears on the list of points of order requiring 60 votes to waive, the Budget Enforcement Act neglected to add section 605(b) to the list. *See supra* pp. 298-299. Consequently, while violating the maximum deficit amount in this context used to require a supermajority, it no longer does.

Public Law 97-258 repealed the section 605 originally enacted in the Congressional Budget Act of 1974. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982). The original sections 601-605 and 607 were codified in sections 1105, 1106, and 1108-1110 of title 31. As originally enacted in 1974, section 605 read as follows:

> BUDGET DATA BASED ON CONTINUATION OF EXISTING LEVEL OF SERVICES
>
> SEC. 605. (a) On or before November 10 of each year (beginning with 1975), the President shall submit to the Senate and the House of Representatives the estimated outlays and proposed budget authority which would be included in the Budget to be submitted pursuant to section 201 of the Budget and Accounting Act, 1921, for the ensuing fiscal year if all programs and activities were carried on during such ensuing fiscal year at the same level as the fiscal years in progress and without policy changes in such programs and activities. The estimated outlays and proposed budget authority submitted pursuant to this section shall be shown by function and subfunctions (in accordance with the classifications in the budget summary table entitled "Budget Authority and Outlays by Function and Agency"), by major programs within each such function, and by agency. Accompanying these estimates shall be the economic and programmatic assumptions underlying the estimated outlays and proposed budget authority, such as the rate of inflation, the rate of real economic growth, the unemployment rate, program caseloads, and pay increases.
>
> (b) The Joint Economic Committee shall review the estimated outlays and proposed budget authority so submitted, and shall submit to the Committees on the Budget of both Houses an economic evaluation thereof on or before December 31 of each year.

SEC. 606. 5-YEAR BUDGET RESOLUTIONS; BUDGET RESOLUTIONS MUST CONFORM TO BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985.[848]

(a) 5-Year Budget Resolutions. -- In the case of any concurrent resolution on the budget for fiscal year 1992, 1993, 1994, or 1995, that resolution shall set forth appropriate levels for the fiscal year beginning on October 1 of the calendar year in which it is reported and for each of the 4 succeeding fiscal years for the matters described in section 301(a).

(b) Point of Order in the House of Representatives. -- It shall not be in order in the House of Representatives to consider any concurrent resolution on the budget for a fiscal year or conference report thereon under section 301 or 304 that exceeds the maximum deficit amount for each fiscal year covered by the concurrent resolution or conference report as determined under section 601(a), including possible revisions under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.

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[848] Section 13111 of the Budget Enforcement Act added what is now section 606. *See infra* p. 623. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act, see *supra* note 805 (at the beginning of title VI).

Section 223 of Gramm-Rudman-Hollings repealed the original section 606. *See infra* p. 354. As originally enacted in 1974, section 606 read as follows:

> STUDY OF OFF-BUDGET AGENCIES
>
> SEC. 606. The Committees on the Budget of the House of Representatives and the Senate shall study on a continuing basis those provisions of law which exempt agencies of the Federal Government, or any of their activities or outlays, from inclusion in the Budget of the United States Government transmitted by the President under section 201 of the Budget and Accounting Act, 1921. Each committee shall, from time to time, report to its House its recommendations for terminating or modifying such provisions.

(c) Point of Order in the Senate.[849] -- It shall not be in order in the Senate to consider any concurrent resolution on the budget for a fiscal year under section 301, or to consider any amendment to such a concurrent resolution, or to consider a conference report on such a concurrent resolution, if the level of total budget outlays[850] for the first fiscal year that is set forth in such concurrent resolution or conference report exceeds the recommended level of Federal revenues set forth for that year by an amount that is greater than the maximum deficit amount for such fiscal year as determined under section 601(a), or if the adoption of such amendment would result in a level of total budget outlays for that fiscal year which exceeds the recommended level of Federal revenues for that fiscal year, by an amount that is greater than the maximum deficit amount

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[849] Section 904(c) provides that the Senate may waive or suspend section 601(b) only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* pp. 298-299. Section 275(b) of Gramm-Rudman-Hollings provides that this supermajority requirement expires on September 30, 1995. *See infra* p. 608.

Note also the provisions for the suspension of title VI under certain circumstances after the declaration of war or a recession pursuant to section 258 of Gramm-Rudman-Hollings. *See infra* pp. 543-556.

For legislative history of section 606(c), see *infra* note 851 (at the end of this subsection).

[850] Section 3(1) defines "outlays." *See supra* p. 11.

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for such fiscal years as determined under section 601(a).[851]

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[851] Section 606(c) now addresses the matter that the old section 301(i) used to address. Section 13303(b) of the Budget Enforcement Act repealed what used to be section 301(i). *See infra* p. 669. Before enactment of the Budget Enforcement Act, section 301(i) read as follows:

> (i) MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED. --
>
> (1)(A) Except as provided in paragraph (2), it shall not be in order in either the House of Representatives or the Senate to consider any concurrent resolution on the budget for a fiscal year under this section, or to consider any amendment to such a concurrent resolution, or to consider a conference report on such a concurrent resolution, if the level of total budget outlays for such fiscal year that is set forth in such concurrent resolution or conference report exceeds the recommended level of Federal revenues set forth for that year by an amount that is greater than the maximum deficit amount for such fiscal year as determined under section 3(7), or if the adoption of such amendment would result in a level of total budget outlays for that fiscal year which exceeds the recommended level of Federal revenues for that fiscal year, by an amount that is greater than the maximum deficit amount for such fiscal year as determined under section 3(7).
>
> (B) In the House of Representatives the point of order established under subparagraph (A) with respect to the consideration of a conference report or with respect to the consideration of a motion to concur, with or without an amendment or amendments, in a Senate amendment, the stage of disagreement having been reached, may be waived only by a vote of three-fifths of the Members present and voting, a quorum being present.
>
> (2)(A) Paragraph (1) of this subsection shall not apply if a declaration of war by the Congress is in effect.
>
> (B) Paragraph (1) shall not apply to the consideration of any concurrent resolution on the budget for fiscal year 1988 or fiscal year 1989, or any amendment thereto or conference report thereon, if such concurrent resolution or conference report provides, or in the case of an amendment if the concurrent resolution as changed by the adoption of such amendment would provide for deficit reduction from a budget baseline estimate as specified in section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 for such fiscal year (based on laws in effect on January 1 of the calendar year during which the fiscal year begins) equal to or greater than the maximum amount of unachieved deficit reduction for such fiscal year as specified in section 251(a)(3)(A) of such Act.
>
> (C) For purposes of the application of subparagraph (B), the amount of deficit reduction for a fiscal year provided for in a concurrent resolution, or amendment thereto or conference report thereon, shall be determined on the basis of estimates made by the

(continued...)

(d) ADJUSTMENTS. -- (1) Notwithstanding any other provision of law, concurrent resolutions on the budget for fiscal years 1992, 1993, 1994, and 1995 under section 301[852] or 304[853] may set forth levels consistent with allocations increased by --

(A) amounts not to exceed the budget authority[854] amounts in section 251(b)(2)(E)(i)[855] and (ii)[856] of the Balanced Budget and Emergency Deficit Control Act of 1985 and the composite outlays[857] per category[858] consistent with them; and

(B) the budget authority[859] and outlay[860] amounts in section 251(b)(1)[861] of that Act.

(2) For purposes of congressional consideration of provi-

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[851] (...continued)
Committee on the Budget of the House of Representatives or of the Senate, as the case may be.

[852] *See supra* pp. 46-69.

[853] *See supra* pp. 93-94.

[854] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[855] *See infra* p. 427. Section 251(b)(2)(E)(i) of Gramm-Rudman-Hollings provides the special allowance for discretionary new budget authority for the domestic category.

[856] *See infra* p. 427. Section 251(b)(2)(E)(ii) of Gramm-Rudman-Hollings provides the special allowance for discretionary new budget authority for the international category.

[857] Section 250(c)(20) of Gramm-Rudman-Hollings defines "composite outlay rate." *See infra* p. 378.

[858] Section 250(c)(4) of Gramm-Rudman-Hollings defines "category." *See infra* p. 373.

[859] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[860] Section 3(1) defines "outlays." *See supra* p. 11.

[861] *See infra* pp. 418-421. Section 251(b)(1) of Gramm-Rudman-Hollings provides for adjustments to discretionary spending limits for changes in concepts and definitions, changes in inflation, and credit reestimates.

sions described in sections 251(b)(2)(A),[862] 251(b)(2)(B),[863] 251(b)(2)(C),[864] 251(b)(2)(D),[865] and 252(e),[866] determinations under sections 302,[867] 303,[868] and 311[869] shall not take into account any new budget authority,[870] new entitlement authority,[871] outlays,[872] receipts, or deficit effects in any fiscal year of those provisions.

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[862] *See infra* p. 421. Section 251(b)(2)(A) of Gramm-Rudman-Hollings provides for adjustments to discretionary spending limits for the Internal Revenue Service compliance initiative.

[863] *See infra* p. 422. Section 251(b)(2)(B) of Gramm-Rudman-Hollings provides for adjustments to discretionary spending limits for debt forgiveness for the Arab Republic of Egypt and the Government of Poland.

[864] *See infra* p. 423. Section 251(b)(2)(C) of Gramm-Rudman-Hollings provides for adjustments to discretionary spending limits for the United States quota as part of the International Monetary Fund Ninth General Review of Quotas.

[865] *See infra* p. 423. Section 251(b)(2)(D) of Gramm-Rudman-Hollings provides for adjustments to discretionary spending limits for emergency requirements (including the costs for operation Desert Shield).

[866] *See infra* p. 454. Section 252(e) of Gramm-Rudman-Hollings provides for direct spending or receipts legislation that the President and Congress designate as emergency requirements.

[867] *See supra* pp. 70-82.

[868] *See supra* pp. 83-92.

[869] *See supra* pp. 147-158. This listing of sections should also include the new points of order that title VI added to the Congressional Budget Act in sections 601(b), 602(c), and 605(b). Congress intended that the Budget Committees not count these items for any Congressional Budget Act purposes.

[870] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[871] Section 3(9) (*see supra* p. 18) defines "entitlement authority" to mean that authority described in section 401(c)(2)(C) (*see supra* p. 204).

[872] Section 3(1) defines "outlays." *See supra* p. 11.

SEC. 607. EFFECTIVE DATE.[873]

This title shall take effect upon its date of enactment and shall apply to fiscal years 1991 to 1995.

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[873] Section 13111 of the Budget Enforcement Act added what is now section 607. *See infra* p. 623. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act, see *supra* note 805 (at the beginning of title VI).

Public Law 97-258 repealed the section 607 originally enacted in the Congressional Budget Act of 1974. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982). The original sections 601-605 and 607 were codified in sections 1105, 1106, and 1108-1110 of title 31. As originally enacted in 1974, section 607 read as follows:

> YEAR-AHEAD REQUESTS FOR AUTHORIZATION OF NEW BUDGET AUTHORITY
>
> SEC. 607. Notwithstanding any other provision of law, any request for the enactment of legislation authorizing the enactment of new budget authority to continue a program or activity for a fiscal year (beginning with the fiscal year commencing October 1, 1976) shall be submitted to the Congress not later than May 15 of the year preceding the year in which the fiscal year begins. In the case of a request for the enactment of legislation authorizing the enactment of new budget authority for a new program or activity which is to continue for more than one fiscal year, such request shall be submitted for at least the first 2 fiscal years.

TITLE VII
PROGRAM REVIEW AND EVALUATION

REVIEW AND EVALUATION BY STANDING COMMITTEES

SEC. 701. Section 136(a) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190d) is amended by adding at the end thereof the following new sentences: "Such committees may carry out the required analysis, appraisal, and evaluation themselves, or by contract, or may require a Government agency to do so and furnish a report thereon to the Congress. Such committees may rely on such techniques as pilot testing, analysis of costs in comparison with benefits, or provision for evaluation after a defined period of time."[874]

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[874] Public Law 97-258 repealed section 702. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, 96 Stat. 877, 1082 (Sept. 13, 1982). Section 702 was codified in sections 702, 717, 719, and 731 of title 31. As originally enacted in 1974, section 702 read as follows:

> REVIEW AND EVALUATION BY THE COMPTROLLER GENERAL
>
> SEC. 702. (a) Section 204 of the Legislative Reorganization Act of 1970 (31 U.S.C. 1154) is amended to read as follows:
>
> "REVIEW AND EVALUATION
>
> "SEC. 204. (a) The Comptroller General shall review and evaluate the results of Government programs and activities carried on under existing law when ordered by either House of Congress, or upon his own initiative, or when requested by any committee of the House of Representatives or the Senate, or any joint committee of the two Houses, having jurisdiction over such programs and activities.
>
> "(b) The Comptroller General, upon request of any committee of either House or any joint committee of the two

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[874](...continued)
Houses shall --

"(1) assist such committee or joint committee in developing a statement of legislative objectives and goals and methods for assessing and reporting actual program performance in relation to such legislative objectives and goals. Such statements shall include, but are not limited to, recommendations as to methods of assessment, information to be reported, responsibility for reporting, frequency of reports, and feasibility of pilot testing; and

"(2) assist such committee or joint committee in analyzing and assessing program reviews or evaluation studies prepared by and for any Federal agency.

Upon request of any Member of either House, the Comptroller General shall furnish to such Member a copy of any statement or other material compiled in carrying out paragraphs (1) and (2) which has been released by the committee or joint committee for which it was compiled.

"(c) The Comptroller General shall develop and recommend to the Congress methods for review and evaluation of Government programs and activities carried on under existing law.

"(d) In carrying out his responsibilities under this section, the Comptroller General is authorized to establish an Office of Program Review and Evaluation within the General Accounting Office. The Comptroller General is authorized to employ not to exceed ten experts on a permanent, temporary, or intermittent basis and to obtain services as authorized by section 3109 of title 5, United States Code, but in either case at a rate (or the daily equivalent) for individuals not to exceed that prescribed, from time to time, for level V of the Executive Schedule under section 5316 of title 5, United States Code.

"(e) The Comptroller General shall include in his annual report to the Congress a review of activities under this section, including his recommendations of methods for review and evaluation of Government programs and activities under subsection (c)."

(b) Item 204 in the table of contents of such Act is amended to read as follows:

"Sec. 204. Review and evaluation."

CONTINUING STUDY OF ADDITIONAL BUDGET REFORM PROPOSALS

SEC. 703. (a) The Committees on the Budget of the House of Representatives and the Senate shall study on a continuing basis proposals designed to improve and facilitate methods of congressional budget-making. The proposals to be studied shall include, but are not limited to, proposals for --

(1) improving the information base required for determining the effectiveness of new programs by such means as pilot testing, survey research, and other experimental and analytical techniques;

(2) improving analytical and systematic evaluation of the effectiveness of existing programs;

(3) establishing maximum and minimum time limitations for program authorization; and

(4) developing techniques of human resource accounting and other means of providing noneconomic as well as economic evaluation measures.

(b) The Committee on the Budget of each House shall, from time to time, report to its House the results of the study carried on by it under subsection (a),[875] together with its recommendations.

(c) Nothing in this section shall preclude studies to improve the budgetary process by any other committee of the House of Representatives or the Senate or any joint committee of the Congress.

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[875] *See supra* p. 283.

TITLE VIII
FISCAL AND BUDGETARY INFORMATION AND CONTROLS[876]

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[876] Public Law 97-258 repealed sections 801 and 802. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, 96 Stat. 877, 1082 (Sept. 13, 1982). Sections 801 and 802 were codified in sections 1104, 1112, and 1113 of title 31. As originally enacted in 1974, sections 801 and 802 read as follows:

AMENDMENT TO LEGISLATIVE REORGANIZATION ACT OF 1970

SEC. 801. (a) So much of title II of the Legislative Reorganization Act of 1970 (31 U.S.C. chapter 22) as precedes section 204 thereof is amended to read as follows:

"TITLE II -- FISCAL AND BUDGETARY INFORMATION AND CONTROLS

"PART 1 -- FISCAL, BUDGETARY AND PROGRAM-RELATED DATA AND INFORMATION

"FEDERAL FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION SYSTEMS

"SEC. 201. The Secretary of the Treasury and the Director of the Office of Management and Budget, in cooperation with the Comptroller General of the United States, shall develop, establish, and maintain, for use by all Federal agencies, standardized data processing and information systems for fiscal, budgetary, and program-related data and information. The development, establishment, and maintenance of such systems shall be carried out so as to meet the needs of the various branches of the Federal Government and, insofar as practicable, of governments at the State and local level.

"STANDARDIZATION OF TERMINOLOGY, DEFINITIONS, CLASSIFICATIONS, AND CODES FOR FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

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[876](...continued)

"SEC. 202. (a)(1) The Comptroller General of the United States, in cooperation with the Secretary of the Treasury, the Director of the Office of Management and Budget, and the Director of the Congressional Budget Office, shall develop, establish, maintain, and publish standard terminology, definitions, classifications, and codes for Federal fiscal, budgetary, and program-related data and information. The authority contained in this section shall include, but not be limited to, data and information pertaining to Federal fiscal policy, revenues, receipts, expenditures, functions, programs, projects, and activities. Such standard terms, definitions, classifications, and codes shall be used by all Federal agencies in supplying to the Congress fiscal, budgetary, and program-related data and information.

"(2) The Comptroller General shall submit to the Congress, on or before June 30, 1975, a report containing the initial standard terminology, definitions, classifications, and codes referred to in paragraph (1), and shall recommend any legislation necessary to implement them. After June 30, 1975, the Comptroller General shall submit to the Congress additional reports as he may think advisable, including any recommendations for any legislation he may deem necessary to further the development, establishment, maintenance, modification, and executive implementation of such standard terminology, definitions, classifications, and codes.

"(b) In carrying out this responsibility, the Comptroller General of the United States shall give particular consideration to the needs of the Committees on the Budget of the House and Senate, The Committees on Appropriations of the House and Senate, the Committee on Ways and Means of the House, the Committee on Finance of the Senate, and the Congressional Budget Office.

"(c) The Comptroller General of the United States shall conduct a continuing program to identify and specify the needs of the committees and Members of Congress for fiscal, budgetary, and program-related information to support the objectives of this part.

"(d) The Comptroller General shall assist committees in developing their information needs, including such needs expressed in legislative requirements, and shall monitor the various recurring reporting requirements of the Congress and committees and make recommendations to the Congress and committees for changes and improvements in their reporting requirements to meet congressional information needs ascertained by the Comptroller General, to enhance their usefulness to the congressional users and to eliminate

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[876](...continued)
duplicative or unneeded reporting.

"(e) On or before September 1, 1974, and each year thereafter, the Comptroller General shall report to the Congress on needs identified and specified under subsection (c); the relationship of these needs to the existing reporting requirements; the extent to which the executive branch reporting presently meets the identified needs; the specification of changes to standard classifications needed to meet congressional needs; the activities, progress and results of his activities under subsection (d); and the progress that the executive branch has made during the past year.

"(f) On or before March 1, 1975, and each year thereafter, the Director of the Office of Management and Budget and the Secretary of the Treasury shall report to the Congress on their plans for addressing the needs identified and specified under subsection (c), including plans for implementing changes to classifications and codes to meet the information needs of the Congress as well as the status of prior year system and classification implementations.

"AVAILABILITY TO AND USE BY THE CONGRESS AND STATE AND LOCAL GOVERNMENTS OF FEDERAL FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"SEC. 203. (a) Upon request of any committee of either House, of any joint committee of the two Houses, of the Comptroller General, or of the Director of the Congressional Budget Office, the sEcretary of the Treasury, the Director of the Office of Management and Budget, and the heads of the various executive agencies shall --

"(1) furnish to such committee or joint committee, the Comptroller General, or the Director of the Congressional Budget Office information as to the location and nature of available fiscal, budgetary, and program-related data and information;

"(2) to the extent practicable, prepare summary tables of such data and information and any related information deemed necessary by such committee or joint committee, the Comptroller General, or the Director of the Congressional Budget Office; and

"(3) furnish to such committee or joint committee, the Comptroller General, or the Direc-

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[876](...continued)

tor of the Congressional Budget Office any program evaluations conducted or commissioned by any executive agency.

"(b) The Comptroller General, in cooperation with the Director of the Congressional Budget Office, the Secretary of the Treasury, and the Director of the Office of Management and Budget, shall --

"(1) develop, establish, and maintain an up-to-date inventory and directory of sources and information systems containing fiscal, budgetary, and program-related data and information and a brief description of their content;

"(2) provide, upon request, assistance to committees, joint committees, and Members of Congress in securing Federal fiscal, budgetary, and program-related data and information from the sources identified in such inventory and directory; and

"(3) furnish, upon request, assistance to committees and joint committees of Congress and, to the extent practicable, to Members of Congress in appraising and analyzing fiscal, budgetary, and program-related data and information secured from the sources identified in such inventory and directory.

"(c) The Comptroller General and the Director of the Congressional Budget Office shall, to the extent they deem necessary, develop, establish, and maintain a central file or files of the data and information required to carry out the purposes of this title. Such a file or files shall be established to meet recurring requirements of the Congress for fiscal, budgetary, and program-related data and information and shall include, but not be limited to, data and information pertaining to budget requests, congressional authorizations to obligate and spend, apportionment and reserve actions, and obligations and expenditures. Such file or files and their indexes shall be maintained in such a manner as to facilitate their use by the committees of both Houses, joint committees, and other congressional agencies through modern data processing and communication techniques.

"(d) The Director of the Office of Management and Budget, in cooperation with the Director of the Congressional Budget Office, the Comptroller General, and appropri-

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[876] (...continued)

> ate representatives of State and local governments, shall provide, to the extent practicable, State and local governments such fiscal, budgetary, and program-related data and information as may be necessary for the accurate and timely determination by these governments of the impact of Federal assistance upon their budgets."

(b) The table of contents of the Legislative Reorganization Act of 1970 is amended by striking out --

"TITLE II – FISCAL CONTROLS

"PART 1 – BUDGETARY AND FISCAL INFORMATION AND DATA

"Sec. 201. Budgetary and fiscal data processing system.
"Sec. 202. Budget standard classifications.
"Sec. 203. Availability to Congress of budgetary, fiscal, and related data."

and inserting in lieu thereof --

"TITLE II – FISCAL AND BUDGETARY INFORMATION AND CONTROLS

"PART 1 – FISCAL, BUDGETARY, AND PROGRAM-RELATED DATA AND INFORMATION

"Sec. 201. Federal fiscal, budgetary, and program-related data and information systems.
"Sec. 202. Standardization of terminology, definitions, classifications, and codes for fiscal, budgetary, and program-related data and information.
"Sec. 203. Availability to and use by the Congress and State and local governments of Federal fiscal, budgetary, and program-related data and information."

CHANGES IN FUNCTIONAL CATEGORIES

SEC. 802. Any change in the functional categories set forth in the Budget of the United State Government transmitted pursuant to section 201 of the Budget and Accounting Act, 1921, shall be made only in consultation with the Committees on Appropriations and the Budget of the House of Representatives and Senate.

TITLE IX MISCELLANEOUS PROVISIONS; EFFECTIVE DATES

AMENDMENTS TO RULES OF THE HOUSE

SEC. 901. (a) Rule XI of the Rules of the House of Representatives (as amended by section 101(c) of this Act) is amended by inserting immediately after clause 22 the following new clause:

> "22A. The respective areas of legislative jurisdiction under this rule are modified by title I of the Congressional Budget Act of 1974."

(b) Paragraph (c) of clause 29 of Rule XI of the Rules of the House of Representatives (as redesignated by section 101(c)[877] of this Act) is amended by inserting "the Committee on the Budget," immediately after "the Committee on Appropriations,".

(c) Subparagraph (5) of paragraph (a) of clause 30 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "and the Committee on the Budget" immediately before the period at the end thereof.

(d) Subparagraph (4) of paragraph (b) of clause 30 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "and the Committee on the Budget" immediately before the period at the end hereof.[878]

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[877] *See supra* pp. 23-25.

[878] This is so in the original; it should read "thereof."

(e) Paragraph (d) of clause 30 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by striking out "the Committee on Appropriations may appoint" and inserting in lieu thereof "the Committee on Appropriations and the Committee on the Budget may each appoint".

(f) Clause 32 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "the Committee on the Budget," immediately after "the Committee on Appropriations,".

(g) Paragraph (a) of clause 33 of Rule XI of the Rules of the House of Representatives (as so redesignated) is amended by inserting "and the Committee on the Budget" immediately after "the Committee on Appropriations".

CONFORMING AMENDMENTS TO STANDING RULES OF THE SENATE

SEC. 902. Paragraph 1 of rule XXV of the Standing Rules of the Senate is amended --

(1) by striking out "Revenue" in subparagraph (h)1 and inserting in lieu thereof "Except as provided in the Congressional Budget Act of 1974, revenue";

(2) by striking out "The" in subparagraph (h)2 and inserting in lieu thereof "Except as provided in the Congressional Budget Act of 1974, the"; and

(3) by striking out "Budget" in subparagraph (j)(1)(A) and inserting in lieu thereof "Except as provided in the Congressional Budget Act of 1974, budget".

AMENDMENTS TO LEGISLATIVE REORGANIZATION ACT OF 1946

SEC. 903. (a) Section 134(c) of the Legislative Reorganization Act of 1946 (2 U.S.C. 190b(b)[879]) is amended by inserting "or the Committee on the Budget" after "Appropriations".

(b) Section 136(c) of such Act (2 U.S.C. 190d(c)[880]) is amended by striking out "Committee on Appropriations of the Senate and the Committees on Appropriations," and inserting in lieu thereof "Committees on Appropriations and the Budget of the Senate and the Committees on Appropriations, the Budget,".

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[879] S. Res. 274, 96th Cong., 1st Sess. § 2(a), 125 CONG. REC. S16,588, S16,602 (Nov. 14, 1979), repealed 2 U.S.C. § 190b.

[880] S. Res. 274, 96th Cong., 1st Sess. § 2(a), 125 CONG. REC. S16,588, S16,602 (Nov. 14, 1979), repealed 2 U.S.C. § 190d insofar as it related to the Senate. The exception for the Budget Committee that section 903(b) created to the requirement of all committees to submit biennial reports of their activities survives in rule XXVI(8) of the Standing Rules of the Senate.

EXERCISE OF RULEMAKING POWERS

SEC. 904. (a) The provisions of this title (except section 905[881]) and of titles I,[882] III,[883] IV,[884] V,[885] and VI[886] (except section 601(a)[887]) and the provisions of sections[888] 701,[889] 703,[890] and 1017[891] are enacted by the Congress --

(1) as an exercise of the rulemaking power[892] of the

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[881] Section 905 deals with effective dates. *See infra* pp. 304-305.

[882] *See supra* pp. 21-28.

[883] *See supra* pp. 41-158.

[884] *See supra* pp. 199-223.

[885] *See supra* pp. 225-250. Section 13112(a)(11) of the Budget Enforcement Act added this reference to title V (*see infra* p. 625), as section 13201(a) of that Act (*see infra* p. 629) amended title V to address credit reform.

[886] *See supra* pp. 251-279. Section 13112(a)(11) of the Budget Enforcement Act added this reference to title VI (*see infra* p. 625), as section 13111 of that Act (*see infra* p. 623) amended title VI to contain provisions to enforce the budget agreement between Congress and the President.

[887] *See supra* pp. 252-256. Section 601(a) defines the maximum deficit amounts and discretionary spending limits, and since they bind the executive branch as well as Congress, they are not enacted solely as an exercise of the rule-making power.

[888] Section 13112(a)(11) of the Budget Enforcement Act (*see infra* p. 625) deleted a reference here to section 606 (which used to deal with studies by Congressional committees of off-budget agencies (*see supra* note 848)), as section 13111 of the Budget Enforcement Act (*see infra* p. 623) repealed what used to be section 606 and amended title VI to contain provisions to enforce the budget agreement between Congress and the President.

[889] *See supra* p. 281.

[890] *See supra* pp. 283-283.

[891] *See infra* pp. 327-333.

[892] The Constitution provides: "Each House may determine the Rules of its Proceedings . . . ." U.S. CONST. art. I, § 5, cl. 2.

(continued...)

House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.[893]

(b) Any provision[894] of title III[895] or IV[896] may be waived[897]

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[892](...continued)
The provisions of section 904(a) are thus a specific statement of a more general proposition. *See* F. RIDDICK, SENATE PROCEDURE 464 (1981). *See generally* J. KILLIAN, THE CONSTITUTION OF THE UNITED STATES OF AMERICA: ANALYSIS AND INTERPRETATION 120-21 (1987) (on "Rules of Proceedings").

[893] Either the Senate or the House may thus adopt a simple resolution that would waive or suspend any section of the Congressional Budget Act insofar as that section governs only the House adopting the resolution. *See supra* note 287.

[894] Note that section 904(c) similarly provides that the Senate may waive certain sections only by the affirmative vote of three-fifths of the Members, duly chosen and sworn -- that is, 60 Senators. *See infra* pp. 298-299.

Note that the Senate may also waive section 303(a) pursuant to section 303(c). *See supra* pp. 90-92.

Section 904(c) provides that the Senate may waive or suspend sections 301(i), 302(c), 302(f), 305(b)(2), 305(c)(4), 306, 310(d)(2), 310(f), 311(a), 313, 601(b), 606(c), 904(c), and 904(d) only by the affirmative vote of 60 Senators. *See infra* pp. 298-299. Section 271(b) of Gramm-Rudman-Hollings also provides that the Senate may waive or suspend sections 301(i), 302(c), 302(f), 304(b), 310(d), 310(g), and 311(a) only by the affirmative vote of 60 Senators. *See infra* p. 591. Section 13208 of the Budget Enforcement Act (*see infra* pp. 643-644) amended section 904(c) of the Congressional Budget Act (*see infra* pp. 298-299) so as to supersede section 271(b) of Gramm-Rudman-Hollings (*see infra* p. 591), but did not repeal section 271(b).

[895] *See supra* pp. 41-158.

[896] *See supra* pp. 199-223.

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[897] Once the Chair has ruled on a point of order, it is too late to move to waive the provision on which the point of order was based. 128 CONG. REC. S8,884, S8,887-88 (1982); Senate Precedent PRL19820722-001 (July 22, 1982) (LEGIS, Rules database) (attempt to waive by Sen. Thurmond during debate on the Tax Reconciliation Act of 1982).

A motion to waive a provision of the Congressional Budget Act is debatable. *See, e.g.,* 133 CONG. REC. S5,381 (1987); Senate Precedent PRL198704123-002 (Apr. 23, 1987) (LEGIS, Rules database) (inquiry of Sen. Harkin); 132 CONG. REC. S16,420 (Oct. 16, 1986) (inquiries of Sens. Simpson & Domenici); 132 CONG. REC. S14,202 (Sept. 29, 1986); 132 CONG. REC. S318 (Jan. 27, 1986) (inquiry of Sen. Metzenbaum). Contrast the limited debate allowable under a waiver resolution pursuant to section 303(c). *See supra* pp. 73-74.

In contrast, the Chair will permit debate after a point of order is raised under the Congressional Budget Act at the Chair's discretion. *See* 132 CONG. REC. S13,522 (Sept. 24, 1986) (point of order under section 302(f)).

When a Senator makes a motion to waive under during the consideration of a budget resolution or a reconciliation bill, debate is limited to one hour, as specified by section 305(b)(2), *see supra* p. 99, and as applied to reconciliation by section 310(e)(1), *see supra* p. 143. *See also* 131 CONG. REC. S14,011 (1985); Senate Precedent PRL19851024-002 (Oct. 24, 1985) (LEGIS, Rules database) (reconciliation).

A motion to waive may permissibly waive all requirements of the Congressional Budget Act generally. 130 CONG. REC. S7,102 (June 13, 1984). A motion to waive the germaneness requirement of the Congressional Budget Act without specifying the object of that motion, even though made in response to a point of order against an amendment, would waive that requirement without restriction. 131 CONG. REC. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database).

A motion to waive may permissibly waive provisions of the Congressional Budget Act for a bill and "any amendments thereto." 130 CONG. REC. S7,919, S8,011 (1984); Senate Precedent PRL19840621-001 (June 21, 1984) (LEGIS, Rules database).

A motion to waive is amendable. 131 CONG. REC. S14,015-16 (1985); Senate Precedent PRL19851024-003 (Oct. 24, 1985) (LEGIS, Rules database). It takes unanimous consent to modify a motion (such as a motion to waive) after the yeas and nays have been ordered on it. *Id.*

A Senator is entitled to withdraw a point of order the Senator made if the Senate has taken no action on it. 128 CONG. REC. S10,069-71 (1982); Senate Precedent PRL19820810-006 (Aug. 10, 1982) (LEGIS, Rules database) (inquiry Sen. Leahy regarding point of order under rule XV on a supplemental appropriations bill). Once the Chair has ruled on a point of order, it is too late to withdraw the point of order. 128 CONG. REC. S8,884, S8,887-88 (1982); Senate Precedent PRL19820722-001 (July 22, 1982) (LEGIS, Rules database) (attempt by Sen. Dole to withdraw his point of order to a Thurmond amendment to the Tax Reconciliation Act of 1982).

A motion to waive is subject to a motion to table when time has expired or been yielded back. 131 CONG. REC. S14,011 (1985); Senate Precedent PRL19851024-002 (Oct. 24, 1985) (LEGIS, Rules database).

(continued...)

or suspended in the Senate by a majority vote of the Members voting, a quorum being present, or by the unanimous consent of the Senate.[898]

(c)[899] Waiver. -- Sections 305(b)(2),[900] 305(c)(4), 306,[901] 904(c), and 904(d) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.[902] Sections 301(i), 302(c), 302(f), 310(d)(2),

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[897] (...continued)

Any motion in the Senate must be submitted in writing upon the request of any Senator. *Id.* -

[898] Either the Senate or the House may also adopt a simple resolution that would waive or suspend any section of the Congressional Budget Act insofar as that section governs only the House adopting the resolution. *See supra* note 287.

[899] Section 13208(a)(1) of the Budget Enforcement Act amended subsection (c) to read as it does now. *See infra* p. 643. For legislative history of this subsection, see *infra* note 904 (at the end of the subsection).

[900] For examples of motions under section 904 to waive section 305(b), see, *e.g.*, 133 Cong. Rec. S17,652-53 (Dec. 10, 1987) (Harkin motion to waive rejected 47-49 regarding his amendment no. 1257 to S. 1920, the Omnibus Budget Reconciliation Act of 1987); 133 Cong. Rec. S17,600 (Dec. 10, 1987) (Majority Leader Byrd's motion to waive section 305(b) and other sections approved 81-13 regarding specified amendments and motion to recommit regarding S. 1920, the Omnibus Budget Reconciliation Act of 1987).

[901] For examples of motions under section 904 to waive section 306, see, *e.g.*, 133 Cong. Rec. S11,025 (July 31, 1987) (Conrad motion to waive rejected 36-53 regarding his amendment no. 651 to H.J. Res. 324, Increase in the Public Debt Limit); 133 Cong. Rec. S10,584 (July 23, 1987) (Domenici motion to waive rejected 47-49 regarding his amendment no. 631 to H.J. Res. 324, Increase in the Public Debt Limit, that would revise Gramm-Rudman-Hollings); 133 Cong. Rec. S10,579 (July 23, 1987) (Chiles motion to waive approved 71-25 regarding his modified amendment no. 626 to H.J. Res. 324, Increase in the Public Debt Limit, that would revise Gramm-Rudman-Hollings); 129 Cong. Rec. S3,587-603 (Mar. 22, 1983) (Heinz motion to waive rejected 56-41 regarding his amendment to remove Social Security trust funds from the unified budget).

The Senate may also waive section 306 by unanimous consent. *See, e.g.*, 136 Cong. Rec. S8,197 (June 19, 1990) (the Senate agreed to a Cranston unanimous consent request to waive points of order regarding a Heinz amendment regarding congressional action to remove Social Security trust funds from the definition of the deficit).

[902] That is, 60 Senators, no matter how many Senators are present and voting.

310(f),[903] 311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.[904]

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[903] *See supra* p. 144. This reference, which stayed as it was in the Senate-passed version of the bill, should have been changed to "310(g)" when the conference agreement changed the subsection setting forth the point of order to section 310(g). The intent of Congress to refer to section 310(g) and not section 310(f) is evident from the subject matter of section 310(f): It refers only to matters governing the House of Representatives. The Senate-passed version of the bill that became the Budget Enforcement Act repealed section 310(f) altogether, and thus what was 310(g) would have become 310(f). *See* H.R. 5835, 101st Cong., 2d Cong., 136 CONG. REC. S15,868, S15,985, S15,995 (Oct. 18, 1990). The error has no effect on the supermajority required for waiver of section 310(g), however, as the Budget Enforcement Act also mistakenly failed to repeal section 271(b) of Gramm-Rudman-Hollings, which also sets forth a supermajority requirement for waiving section 310(g). *See infra* note 904.

[904] That is, 60 Senators, no matter how many Senators are present and voting.

Section 275(b) of Gramm-Rudman-Hollings provides that this sentence will expire on September 30, 1995, when Gramm-Rudman-Hollings expires. *See infra* p. 608.

Section 13208(a)(1) of the Budget Enforcement Act amended subsection (c) to read as it does now. *See infra* p. 643. Congress intended this last sentence of subsection (c) to supersede section 271(b) of Gramm-Rudman-Hollings (*see infra* p. 591), although when section 13208 of the Budget Enforcement Act (*see infra* pp. 643-644) added this sentence, it mistakenly did not repeal section 271(b) of Gramm-Rudman-Hollings. To the extent that direct conflicts exist, however, this later-enacted language takes precedence over that of section 271(b). Section 271(b) provides:

> (b) OTHER WAIVERS AND SUSPENSIONS IN THE SENATE. -- Sections 301(i), 302(c), 302(f), 304(b), 310(d), 310(g), and 311(a) of the Congressional Budget Act of 1974 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. This subsection shall not apply to any joint resolution reported or discharged pursuant to section 254(a) of this joint resolution.

See infra p. 591.

Section 271(a) of Gramm-Rudman-Hollings added section 904(c) to the Congressional Budget Act in the first place. *See infra* p. 591. Before enactment of the Budget Enforcement Act, section 904(c) read as follows:

> (c) Sections 305(b)(2) and 306 of this Act may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(continued...)

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[904](...continued)

The following table displays the origins of the 60-vote points of order in the Senate:

Origin of 60-Vote Points of Order

Point of Order Section Number	Which legislation added the requirement?			
	Budget Act Section 904(c)	The Byrd Rule	Gramm-Rudman Section 271(b)	Budget Enforcement Act
	Congressional Budget Act sections			
301(i)	-	-	X	-
302(c)	-	-	X	-
302(f)	-	-	X	-
304(b)	-	-	X	-
305(b)(2)	X	-	-	-
305(c)(4)	-	-	-	X
306	X	-	-	-
310(d)(2)	-	-	X	-
310(f)	-	-	-	X
310(g)	-	-	X	-
311(a)	-	-	X	-
313	-	X	-	-
601(b)	-	-	-	X
606(c)	-	-	-	X
904(c)	-	-	-	X
904(d)	-	-	-	X
	Gramm-Rudman-Hollings sections			
258(a)(4)(C)	-	-	-	X
258A(b)(3)(C)(i)	-	-	-	X
258B(f)(1)	-	-	-	X
258B(h)(1)	-	-	-	X
258B(h)(3)	-	-	-	X
258C(a)(5)	-	-	-	X
258C(b)(1)	-	-	-	X

At first blush, it may appear that the Budget Enforcement Act vastly expanded the occasions on which the law requires 60 votes to waive a point of order. On one level this is true, as what used to require a majority vote now requires 60 votes under the sections added to the list. Nonetheless, the real change in the behavior of the Senate will be minimal, for the new sections added to the list by the Budget Enforcement Act all deal with the same subject matter as sections that the law already required 60 votes to waive.

(continued...)

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[904] (...continued)
Thus, Senators would have been more likely to find themselves surprised by the former law, which would have allowed waiver of these sections by a majority vote, than by the revised law, which made waiver consistent across points of order on the same subject.

Specifically, among the sections newly added to the list of sections requiring 60 votes to waive, section 305(c)(4) of the Congressional Budget Act and sections 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258C(b)(1) of Gramm-Rudman-Hollings all require (sometimes among other things) that amendments be germane, just as does section 305(b)(2) of the Congressional Budget Act, which was already on the list. Similarly, section 258(a)(4)(C) of Gramm-Rudman-Hollings prohibits any amendment. Section 601(b) of the Congressional Budget Act prohibits spending more than the discretionary spending limits allow, in a fashion similar to the way that section 302(f) prohibits spending more than allowed by the allocations to a subcommittee. Section 606(c) of the Congressional Budget Act and section 258C(a)(5) of Gramm-Rudman-Hollings prohibit violation of the maximum deficit amount, much as did section 301(i) of the Congressional Budget Act before the Budget Enforcement Act amended it. Section 258B(h)(3) of Gramm-Rudman-Hollings requires that amendments be deficit-neutral, much as does section 310(d)(2) of the Congressional Budget Act. Sections 904(c) and 904(d) of the Congressional Budget Act are the sections that themselves provide the supermajority requirement, and the Budget Enforcement Act added them to the list (in the same way that what used to be the Byrd Rule required a supermajority to waive the subsection that required a supermajority) to counter the argument that one could do away with the entire scheme of supermajority requirements simply by waiving section 904(b) or 904(c). Finally, the Budget Enforcement Act only added section 310(f) to the list by mistake, as discussed in this note above.

Note that the Budget Enforcement Act changed the nature of the point of order provided by section 301(i) of the Congressional Budget Act, which has been on the list of sections requiring a supermajority to waive since the enactment of Gramm-Rudman-Hollings and remains on the list. Whereas section 301(i) used to provide a point of order against a budget resolution violating the maximum deficit amount (much as section 606(c) of the Congressional Budget Act does now), section 301(i) now provides the Social Security "fire wall" point of order in the Senate, which prohibits the Senate Budget Committee from reporting budget resolutions that would decrease the surplus in the Social Security trust funds.

Note also that section 13112(a)(8) of the Budget Enforcement Act (*see infra* p. 625) repealed what used to be section 304(b), which used to require that revisions of budget resolutions remain within the maximum deficit amount and is on the old list of points of order requiring 60 Senators to waive under section 271(b). Section 13111 of the Budget Enforcement Act (*see infra* p. 623) added the new section 606(c) of the Congressional Budget Act (*see supra* p. 275) to fulfill much the same function as did the old section 301(i). (Compare the text of what used to be section 301(i) (*see supra* note 851) with that of the new section 606(c). *See supra* 275.) Section 606(c) does not, however, apply to revisions of budget resolutions under section 304, even though the parallel language for the House of Representatives in section 606(b) (*see supra* p. 271) explicitly mentions revisions of budget resolutions under section 304. Consequently, while violating the maximum deficit amount in this context used to require a supermajority, it no longer does.

Similarly, note also that the Budget Enforcement Act moved from what used to be section 311(a) (*see supra* note 847) to section 605(b) (*see supra* pp. 271-272) the point of

(continued...)

(d) Appeals in the Senate from the decisions of the Chair relating to any provision of title III[905] or IV[906] or section 1017[907] shall, except as otherwise provided therein, be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, concurrent resolution, reconciliation bill, or rescission bill, as the case may be.[908] An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 305(b)(2), 305(c)(4), 306, 904(c), and 904(d). An affirmative vote of three-fifths of the

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[904](...continued)
order that prohibits legislation from violating the maximum deficit amount in the Senate. (Section 13112(a)(10) of the Budget Enforcement Act (*see infra* p. 625) struck the maximum deficit amount point of order from what used to be section 311(a), and section 13111 of the Budget Enforcement Act (*see infra* p. 623) added what is now section 605.) The Budget Enforcement Act neglected, however, to add section 605(b) to the list of sections requiring 60 votes to waive. Consequently, while violating the maximum deficit amount in this context used to require a supermajority, it no longer does.

[905] *See supra* pp. 41-158.

[906] *See supra* pp. 199-223.

[907] *See infra* pp. 327-333.

[908] Compare the similar provisions for control and division of time on appeals in section 305(b)(2), which provide for time for the minority leader under certain circumstances. *See supra* p. 99.

Despite the legislative language of this subsection and section 305(b)(2), the Chair once responded to an inquiry that time for debate on an appeal from the ruling of the Chair during consideration of a reconciliation bill was controlled by and evenly divided between the Senator who made the appeal and the majority leader. 128 CONG. REC. S8,702-03, S8,705 (1982); Senate Precedent PRL19820720-003 (July 20, 1982) (LEGIS, Rules database) (inquiry by the manager, Senator Packwood, during debate on the Reconciliation Tax Act of 1982). As section 310(e)(1) applies the provisions of section 305(b)(2) to reconciliation bills, section 305(b)(2) indicates that the Chair should have responded that time was to be equally divided between, and controlled by, the Senator who made the appeal and the manager of the reconciliation bill, except that in the event that the manager favored the appeal, the minority leader or the minority leader's designee would control the time in opposition.

Contrast the more limited debate -- 20 minutes -- allowable for appeals under a waiver resolution pursuant to section 303(c). *See supra* pp. 73-74.

Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 301(i), 302(c), 302(f), 310(d)(2), 310(f),[909] 311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985[.][910]

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[909] *See supra* p. 144. This reference, which stayed as it was in the Senate-passed version of the bill, should have been changed to "310(g)" when the conference agreement changed the subsection providing the point of order to section 310(g). The intent of Congress to refer to section 310(g) and not section 310(f) is evident from the subject matter of section 310(f): It refers only to matters governing the House of Representatives. The Senate-passed version of the bill that became the Budget Enforcement Act repealed section 310(f) altogether, and thus what was 310(g) would have become 310(f). *See* H.R. 5835, 101st Cong., 2d Cong., 136 CONG. REC. S15,868, S15,985, S15,995 (Oct. 18, 1990). The error has no effect on the supermajority required to appeal rulings regarding section 310(g), however, as the Budget Enforcement Act also mistakenly failed to repeal section 271(c) of Gramm-Rudman-Hollings, which also sets forth the supermajority requirement for appeals relating to section 310(g). *See infra* note 910.

[910] That is, 60 Senators, no matter how many Senators are present and voting.

The final period here is missing in the original.

Section 275(b) of Gramm-Rudman-Hollings provides that this sentence will expire on September 30, 1995, when Gramm-Rudman-Hollings expires. *See infra* p. 608.

Section 13208(a)(1) of the Budget Enforcement Act amended subsection (c) to read as it does now. *See infra* p. 643. This sentence supersedes section 271(c) of Gramm-Rudman-Hollings (*see infra* p. 591), although when section 13208 of the Budget Enforcement Act (*see infra* pp. 643-644) added this sentence, it did not repeal section 271(c) of Gramm-Rudman-Hollings. To the extent that direct conflicts exist, this later-enacted language takes precedence over that of section 271(c). Section 271(c) provides:

> (c) APPEALS OF RULINGS. -- An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under section 301(i), 302(c), 302(f), 304(b), 306, 310(d), 310(g), or 311(a) of the Congressional Budget Act of 1974.

EFFECTIVE DATES

SEC. 905. (a) Except as provided in this section, the provisions of this Act shall take effect on the date of its enactment.

(b) Title II[911] (except section 201(a)[912]), section 403,[913] and section 502(c)[914] shall take effect on the day on which the first Director of the Congressional Budget Office is appointed under section 201(a).[915]

(c) Except as provided in section 906,[916] title III[917] and section 402[918] shall apply with respect to the fiscal year begin-

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[911] *See supra* pp. 29-40.

[912] *See supra* pp. 29-30.

[913] *See supra* pp. 214-216.

[914] *See supra* note 722. Public Law 97-258 repealed the section 502 to which this reference applies. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982).

[915] *See supra* pp. 29-30.

[916] *See infra* p. 306.

[917] *See supra* pp. 41-158.

[918] *See supra* note 653. Note that this effective date applied to the version of section 402 that section 212 of Gramm-Rudman-Hollings repealed.

ning on October 1, 1976, and succeeding fiscal years, and section 401[919] shall take effect on the first day of the second regular session of the Ninety-fourth Congress.[920]

(d) The amendments to the Budget and Accounting Act, 1921, made by sections 601,[921] 603,[922] and 604[923] shall apply with respect to the fiscal year beginning on July 1, 1975, and succeeding fiscal years, except that section 201(g)[924] of such Act (as added by section 601[925]) shall apply with respect to the fiscal year beginning on October 1, 1976, and succeeding fiscal years and section 201(i)[926] of such Act (as added by section 601[927]) shall apply with respect to the fiscal year beginning on October 1, 1978, and succeeding fiscal years. The amendment to such Act made by section 602[928] shall apply with respect to the fiscal year beginning on October 1, 1976, and succeeding fiscal years.

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[919] *See supra* pp. 199-210.

[920] That is, January 19, 1976.

[921] *See supra* note 821. Public Law 97-258 repealed sections 601-604. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982).

[922] *See supra* note 840.

[923] *See supra* note 842.

[924] Section 201(g) of the Budget and Accounting Act, 1921, is codified, as amended, in 31 U.S.C. § § 1105 & 1106 (1988).

[925] *See supra* note 821.

[926] Section 201(i) of the Budget and Accounting Act, 1921, is codified in part, as amended, in 31 U.S.C. § 1108 (1988).

[927] *See supra* note 805.

[928] *See supra* note 822.

APPLICATION OF CONGRESSIONAL BUDGET PROCESS TO FISCAL YEAR 1976

SEC. 906. If the Committee on the Budget of the House of Representatives and the Senate both agree that it is feasible to report and act on a concurrent resolution on the budget referred to in section 301(a),[929] or to apply any provision of title III[930] or section 401[931] or 402,[932] for the fiscal year beginning on July 1, 1975, and submit reports of such agreement to their respective Houses, then to the extent and in the manner specified in such reports, the provisions so specified and section 202(f)[933] shall apply with respect to such fiscal year. If any provision so specified contains a date, such reports shall also specify a substitute date.

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[929] *See supra* pp. 46-51.

[930] *See supra* pp. 41-158.

[931] *See supra* pp. 199-210.

[932] *See supra* pp. 211-212.

[933] *See supra* pp. 36-38.

TITLE X
IMPOUNDMENT CONTROL

PART A
GENERAL PROVISIONS

DISCLAIMER

SEC. 1001. Nothing contained in this Act, or in any amendments made by this Act, shall be construed as --

(1) asserting or conceding the constitutional powers or limitations of either the Congress or the President;

(2) ratifying or approving any impoundment heretofore or hereafter executed or approved by the President or any other Federal officer or employee, except insofar as pursuant to statutory authorization then in effect;

(3) affecting in any way the claims or defenses of any party to litigation concerning any impoundment; or

(4) superseding any provision of law which requires the obligation of budget authority[934] or the making of outlays[935] thereunder.[936]

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[934] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[935] Section 3(1) defines "outlays." *See supra* p. 11.

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[936](...continued)

[936] Public Law 97-258 repealed sections 1002 and 1003. *See* An Act to Revise, Codify, and Enact Without Substantive Change Certain General and Permanent Laws, Related to Money and Finance, as title 31, United States Code, "Money and Finance," Pub. L. No. 97-258, § 5(b), 96 Stat. 877, 1082 (Sept. 13, 1982). Section 1002 was codified in section 1512 of title 31. As originally enacted in 1974, sections 1002 and 1003 read as follows:

AMENDMENT TO ANTIDEFICIENCY ACT

SEC. 1002. Section 3679(c)(2) of the Revised Statutes, as amended (31 U.S.C. 665) is amended to read as follows:

> "(2) In apportioning any appropriation, reserves may be established solely to provide for contingencies, or to effect savings whenever savings are made possible by or through changes in requirements or greater efficiency of operations. Whenever it is determined by an officer designated in subsection (d) of this section to make apportionments and reapportionments that any amount so reserved will not be required to carry out the full objectives and scope of the appropriation concerned, he shall recommend the rescission of such amount in the manner provided in the Budget and Accounting Act, 1921, for estimates of appropriations. Except as specifically provided by particular appropriations Acts or other laws, no reserves shall be established other than as authorized by this subsection. Reserves established pursuant to this subsection shall be reported to the Congress in accordance with the Impoundment Control Act of 1974."

REPEAL OF EXISTING IMPOUNDMENT REPORTING PROVISION

SEC. 1003. Section 203 of the Budget and Accounting Procedures Act of 1950 is repealed.

PART B
CONGRESSIONAL CONSIDERATION OF PROPOSED RESCISSIONS, RESERVATIONS, AND DEFERRALS OF BUDGET AUTHORITY

DEFINITIONS

SEC. 1011. For purposes of this part --

(1) "deferral of budget authority"[937] includes --

(A) withholding or delaying the obligation or expenditure of budget authority[938] (whether by establishing reserves or otherwise) provided for projects or activities; or

(B) any other type of Executive action or inaction which effectively precludes the obligation or expenditure of budget authority,[939] including authority to obligate by contract in advance of appropriations as specifically authorized by law;

(2) "Comptroller General" means the Comptroller

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[937] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[938] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[939] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

General of the United States;

(3) "rescission bill" means a bill or joint resolution which only rescinds, in whole or in part, budget authority[940] proposed to be rescinded in a special message transmitted by the President under section 1012,[941] and upon which the Congress completes action before the end of the first period of 45 calendar days[942] of continuous session of the Congress after the date on which the President's message is received by the Congress;

(4) "impoundment resolution" means a resolution of the House of Representatives or the Senate which only expresses its disapproval of a proposed deferral of budget authority[943] set forth in a special message transmitted by the President under section 1013;[944] and

(5) continuity of a session of the Congress shall be considered as broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain shall be excluded in the computation of the 45-day period referred to in paragraph (3)[945] of this section and in section 1012,[946] and the 25-day periods referred to in sections 1016[947] and 1017(b)(1).[948] If a

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[940] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[941] *See infra* pp. 312-314.

[942] Section 1011(5) defines this 45-day period. *See infra* p. 310.

[943] Section 1011(1) defines "deferral of budget authority." *See supra* p. 309. Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[944] *See infra* pp. 315-318.

[945] *See supra* p. 310.

[946] *See infra* pp. 312-314.

[947] *See infra* pp. 325-326.

special message is transmitted under section 1012[949] during any Congress and the last session of such Congress adjourns sine die before the expiration of 45 calendar days of continuous session (or a special message is so transmitted after the last session of the Congress adjourns sine die), the message shall be deemed to have been retransmitted on the first day of the succeeding Congress and the 45-day period referred to in paragraph (3)[950] of this section and in section 1012[951] (with respect to such message) shall commence on the day after such first day.

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[948] (...continued)
[948] *See infra* p. 327.

[949] *See infra* pp. 312-314.

[950] *See supra* p. 310.

[951] *See infra* pp. 312-314.

RESCISSION OF BUDGET AUTHORITY

SEC. 1012. (a) TRANSMITTAL OF SPECIAL MESSAGE. -- Whenever the President determines that all or part of any budget authority[952] will not be required to carry out the full objective or scope of programs for which it is provided or that such budget authority should be rescinded for fiscal policy or other reasons (including the termination of authorized projects or activities for which budget authority has been provided), or whenever all or part of budget authority provided for only one fiscal year is to be reserved from obligation for such fiscal year, the President shall transmit to both Houses of Congress a special message specifying --

(1) the amount of budget authority which he proposes to be rescinded or which is to be so reserved;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific project or governmental functions involved;

(3) the reasons why the budget authority should be rescinded or is to be so reserved;

(4) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed rescission or of the reservation; and

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[952] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

(5) all facts, circumstances, and considerations relating to or bearing upon the proposed rescission or the reservation and the decision to effect the proposed rescission or the reservation, and to the maximum extent practicable, the estimated effect of the proposed rescission or the reservation upon the objects, purposes, and programs for which the budget authority is provided.

(b) REQUIREMENT TO MAKE AVAILABLE FOR OBLIGATION. -- Any amount of budget authority[953] proposed to be rescinded or that is to be reserved as set forth in such special message shall be made available for obligation unless, within the prescribed 45-day period,[954] the Congress has completed action on a rescission bill[955] rescinding all or part of the amount proposed to be rescinded or that is to be reserved.[956] Funds made available for

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[953] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[954] Section 1011(5) defines this 45-day period. *See supra* p. 310.

[955] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[956] Several bills introducing in the 101st Congress sought to change what would happen if the Congress failed to act. *See* S. 6, 101st Cong., 1st Sess., 135 CONG. REC. S206-08 (Jan. 25, 1989) (Sen. Dole, "To grant the power to the President to reduce appropriated funds within ten days after the date of enactment of a bill appropriating such funds"); S. Con. Res. 9, 101st Cong., 1st Sess., 135 CONG. REC. S770-72 (Jan. 25, 1989) (Sen. Humphrey, "Establishing procedures for expedited consideration by the Congress of certain bills and joint resolutions submitted by the President"); S. 21, 101st Cong., 1st Sess., 135 CONG. REC. S283-84 (Jan. 25, 1989) (Sen. Roth, "To provide the President with line-item veto authority); S. 155, 101st Cong., 1st Sess., 135 CONG. REC. S500-01 (Jan. 25, 1989) (Sen. Armstrong, "To amend the Impoundment Control Act of 1974 to provide for enhanced rescission procedures"); S. 207, 101st Cong., 1st Sess., 135 CONG. REC. S614-17 (Jan. 25, 1989) (Sen. Dixon, "To amend the Congressional Budget and Impoundment Control Act of 1974 to require expeditious consideration by the Congress of a proposal by the President to rescind all or part of any item of budget authority if the proposal is transmitted to the Congress on the same day on which the President approves the bill or joint resolution providing such budget authority"); S. 829, 101st Cong., 1st Sess., 135 CONG. REC. S4,183-84 (Apr. 18, 1989) (Sen. Roth, "To provide the President with enhanced rescission authority at such time as the debt of the United States Government held by the public exceeds $2,378,000,000,000"); S. 1553, 101st Cong., 1st Sess., 135 CONG. REC. S10,293-96 (Aug. 4, 1989) (Sen. Coats, "To grant the power to the President to reduce budget authority").

The Senate has rejected attempts to change this law. *See, e.g.*, 136 CONG. REC. S7,457-78 (June 6, 1990) (McCain motion to waive point of order under section 306 rejected 43-50 regarding his amendment no. 1995 regarding enhancing the President's

(continued...)

obligation under this procedure may not be proposed for rescission again.[957]

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[956](...continued)
rescission authority); 135 CONG. REC. S15,336-58 (Nov. 9, 1989) (Coats motion to waive point of order under section 306 rejected 40-51 regarding his amendment no. 1092 regarding enhancing the President's rescission authority).

[957] Section 207 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Clarification of Congressional Intent Regarding Rescission Authority," added the sentence "Funds made available for obligation under this procedure may not be proposed for rescission again." Pub. L. No. 100-119, § 207, 101 Stat. 754, 786 (Sept. 29, 1987). The joint statement of mangers accompanying the conference report on that bill explained:

> 10. Clarification of Congressional Intent
> Regarding Rescission Authority
>
> *Current Law*
>
> Section 1012(b) of the 1974 Impoundment Control Act empowers the President to withhold spending appropriated funds during a period of 45 days of continuous session while Congress considers a rescission proposal. Under General Accounting Office interpretations which allow preparation time for the submittal message, and because certain days are not counted as days of continuous session, rescission proposals sometimes result in appropriated funds being withheld for up to 75 or more calendar days. Seriatim proposals covering the same subject matter have the effect of extending indefinitely the period of unavailability.
>
> *Senate Amendment*
>
> The Senate amendment (Section 230) adds language to Section 1012(b) to prohibit the Executive practice of submitting seriatim rescission messages covering similar matter when Congress fails to act on such proposals within the statutory 45-day period. The Senate amendment limits the Executive to one rescission proposal in any year regarding substantially the same budget authority.
>
> *Conference Agreement*
>
> The conference agreement amends Section 1012(b) of the Impoundment Control Act of 1974 to prohibit proposals to rescind budget authority which were the object of a previous rescission proposal not accepted by Congress. The conferees intend that the President be allowed to propose one rescission for any given activity. If the rescission proposal for that activity is not agreed to by Congress, no further rescission proposal for that activity would be allowed during the availability of that appropriation.
>
> The conference agreement is not meant to diminish the restriction on the Executive from the Senate amendment. The conferees intend that the

(continued...)

PROPOSED DEFERRALS OF BUDGET AUTHORITY[958]

SEC. 1013. (a) TRANSMITTAL OF SPECIAL MESSAGE. -- Whenever the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any officer or employee of the United States proposes to defer any budget authority[959] provided for a specific purpose or project, the President shall transmit to the House of Representatives and the Senate a special message specifying --

(1) the amount of the budget authority proposed to be deferred;

(2) any account, department, or establishment of the Government to which such budget authority is available for obligation, and the specific projects or governmental functions involved;

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[957] (...continued)
conference agreement will cover cases in which the Executive seeks to rescind substantially the same budget authority, not just exactly the same budget authority.

The conferees intend that authority granted to the President under this Act regarding the sequestration process shall in no way augment the authority available to him, and the requirements imposed on him, under existing law regarding the deferral or rescission of funds.

H.R. CONF. REP. No. 100-313, 100th Cong., 1st Sess. 67-68 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 739, 767-68.

[958] Section 1011(1) defines "deferral of budget authority." *See supra* p. 309. Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[959] Section 1011(1) defines "deferral of budget authority." *See supra* p. 309. Section 3(2) defines "budget authority." *See supra* p. 11-13.

(3) the period of time during which the budget authority is proposed to be deferred;

(4) the reasons for the proposed deferral, including any legal authority invoked to justify the proposed deferral;

(5) to the maximum extent practicable, the estimated fiscal, economic, and budgetary effect of the proposed deferral; and

(6) all facts, circumstances, and considerations relating to or bearing upon the proposed deferral and the decision to effect the proposed deferral, including an analysis of such facts, circumstances, and considerations in terms of their application to any legal authority, including specific elements of legal authority, invoked to justify such proposed deferral, and to the maximum extent practicable, the estimated effect of the proposed deferral upon the objects, purposes, and programs for which the budget authority is provided. A special message may include one or more proposed deferrals of budget authority. A deferral may not be proposed for any period of time extending beyond the end of the fiscal year in which the special message proposing the deferral is transmitted to the House and the Senate.

(b)[960] CONSISTENCY WITH LEGISLATIVE POLICY. -- Deferrals[961] shall be permissible only --

(1) to provide for contingencies;

(2) to achieve savings made possible by or through

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[960] Section 206 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Codification of Law Regarding Deferral Authority," revised subsection (b) to read as it currently does. Pub. L. No. 100-119, § 206, 101 Stat. 754, 785-86 (Sept. 29, 1987). Compare the similar provisions of 31 U.S.C. § 1512(c)(1) (1988). For legislative history of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, see *infra* note 963.

[961] Section 1011(1) defines "deferral of budget authority." *See supra* p. 309.

changes in requirements or greater efficiency of operations; or

(3) as specifically provided by law.

No officer or employee of the United States may defer any budget authority[962] for any other purpose.[963]

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[962] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[963] Section 206 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Codification of Law Regarding Deferral Authority," revised subsection (b) to read as it currently does. Pub. L. No. 100-119, § 206, 101 Stat. 754, 785-86 (Sept. 29, 1987). The Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 patterned its revision on the similar provisions of 31 U.S.C. § 1512(c)(1) (1988). The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 explained:

> 9. Codification of Law Regarding Deferral Authority
>
> *Current Law*
>
> The Supreme Court in *Immigration and Naturalization* v. *Chadha,* 462 U.S. 919 (1983), held legislative vetoes unconstitutional. Applying Chadha, the Court of Appeals in *City of New Haven* v. *United States,* 809 F. 2d 900 (D.C. Cir. 1987), struck down Section 1013 of the 1974 Impoundment Control Act, dealing with deferrals, thereby denying the President his sole statutory authority to make deferrals for policy reasons. The Court noted its view that the Executive's power to defer was now limited to so-call programmatic deferrals under the Antideficiency Act, which it characterized as dealing with "routine" and "trivial" matters "relating to he normal and orderly operation of the Government that Congress expected to present little controversy." The reporting requirements of Section 1013 have continued in force by virtue of other statutory reference to that section.
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> . . . .
>
> *Senate Amendment*
>
> The Senate amendment (Section 229) enacts a new Section 1013 that codifies the *New Haven* decision and General Accounting Office administrative interpretations by prohibiting policy deferrals and providing that deferrals will be permissible only: (1) for contingencies, (2) for efficiency, or (3) as specifically provided for by law. Programmatic deferrals must be reported to the Congress and be accompanied by a detailed description and justification of the proposal. Deferrals may not be proposed for any period extending beyond the end of the fiscal year in which the proposal is reported.
>
> . . . .

(continued...)

(c) EXCEPTION. -- The provisions of this section do not apply to any budget authority[964] proposed to be rescinded or that is to be reserved as set forth in a special message required to be transmitted under section 1012.[965]

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[963](...continued)

Conference Agreement

The House recedes and concurs in the Senate amendment.

H.R. CONF. REP. No. 100-313, 100th Cong., 1st Sess. 66-67 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 739, 766-67.

[964] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[965] *See supra* pp. 312-314.

TRANSMISSION OF MESSAGES; PUBLICATION

SEC. 1014. (a) DELIVERY TO HOUSE AND SENATE. -- Each special message transmitted under section 1012[966] or 1013[967] shall be transmitted to the House of Representatives and the Senate on the same day, and shall be delivered to the Clerk of the House of Representatives if the House is not in session, and to the Secretary of the Senate if the Senate is not in session. Each special message so transmitted shall be referred to the appropriate committee of the House of Representatives and the Senate. Each such message shall be printed as a document of each House.

(b) DELIVERY TO COMPTROLLER GENERAL. -- A copy of each special message transmitted under section 1012[968] or 1013[969] shall be transmitted to the Comptroller General on the same day it is transmitted to the House of Representatives and the Senate. In order to assist the Congress in the exercise of its functions under sections 1012[970] and 1013,[971] the Comptroller General shall review each such message and inform the House of Representatives and the Senate as promptly as practicable with respect to --

(1) in the case of a special message transmitted

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[966] *See supra* pp. 312-314.

[967] *See supra* pp. 315-318.

[968] *See supra* pp. 312-314.

[969] *See supra* pp. 315-318.

[970] *See supra* pp. 312-314.

[971] *See supra* pp. 315-318.

under section 1012,[972] the facts surrounding the proposed rescission or the reservation of budget authority[973] (including the probable effects thereof); and

(2) in the case of a special message transmitted under section 1013,[974]

(A) the facts surrounding each proposed deferral of budget authority[975] (including the probable effects thereof) and

(B) whether or not (or to what extent), in his judgment, such proposed deferral is in accordance with existing statutory authority.

(c) TRANSMISSION OF SUPPLEMENTARY MESSAGES. -- If any information contained in a special message transmitted under section 1012[976] or 1013[977] is subsequently revised, the President shall transmit to both Houses of Congress and the Comptroller General a supplementary message stating and explaining such revision. Any such supplementary message shall be delivered, referred, and printed as provided in subsection (a).[978] The Comptroller General shall promptly notify the House of Representatives and the Senate of any changes in the information submitted by him under subsection (b)[979] which may be

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[972] *See supra* pp. 312-314.

[973] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[974] *See supra* pp. 315-318.

[975] Section 1011(1) defines "deferral of budget authority." *See supra* p. 309. Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[976] *See supra* pp. 312-314.

[977] *See supra* pp. 315-318.

[978] *See supra* p. 319.

[979] *See supra* pp. 319-320.

necessitated by such revision.

(d) Printing in Federal Register. -- Any special message transmitted under section 1012[980] or 1013,[981] and any supplementary message transmitted under subsection (c),[982] shall be printed in the first issue of the Feral Register published after such transmittal.

(e) Cumulative Reports of Proposed Rescissions, Reservations, and Deferrals of Budget Authority. --

(1) The President shall submit a report to the House of Representatives and the Senate not later than the 10th day of each month during a fiscal year, listing all budget authority[983] for that fiscal year with respect to which, as of the first day of such month --

(A) he has transmitted a special message under section 1012[984] with respect to a proposed rescission or a reservation; and

(B) he has transmitted a special message under section 1013[985] proposing a deferral.[986]

Such report shall also contain, with respect to each such proposed rescission or deferral,[987] or each such reservation,

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[980] *See supra* pp. 312-314.

[981] *See supra* pp. 315-318.

[982] *See supra* p. 320.

[983] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[984] *See supra* pp. 312-314.

[985] *See supra* pp. 315-318.

[986] Section 1011(1) defines "deferral of budget authority." *See supra* p. 309.

[987] Section 1011(1) defines "deferral of budget authority." *See supra* p. 309.

the information required to be submitted in the special message with respect thereto under section 1012[988] or 1013.[989]

(2) Each report submitted under paragraph (1)[990] shall be printed in the first issue of the Federal Register published after its submission.

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[988] *See supra* pp. 312-314.

[989] *See supra* pp. 315-318.

[990] *See supra* pp. 321-322.

REPORTS BY COMPTROLLER GENERAL

SEC. 1015.[991] (a) FAILURE TO TRANSMIT SPECIAL MESSAGE. -- If the Comptroller General finds that the President, the Director of the Office of Management and Budget, the head of any department or agency of the United States, or any other officer or employee of the United States --

> **(1) is to establish a reserve or proposes to defer budget authority[992] with respect to which the President is required to transmit a special message under section 1012[993] or 1013;[994] or**
>
> **(2) has ordered, permitted, or approved the establishment of such a reserve or a deferral of budget authority;**

and that the President has failed to transmit a special message with respect to such reserve or deferral, the Comptroller General shall make a report on such reserve or deferral and any available information concerning it to both Houses of Congress. The provisions of this part shall apply with respect to such reserve or deferral in the same manner and with the same effect as if such report of the Comptroller General were a special message transmitted by the President under section

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[991] Section 206(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Codification of Law Regarding Deferral Authority," provides: "Sections 1015 and 1016 of the Impoundment Control Act of 1974 are reaffirmed." Pub. L. No. 100-119, § 206(c), 101 Stat. 754, 786 (Sept. 29, 1987). For an excerpt from the joint statement of managers accompanying that bill, see *infra* note 1001 (at the end of this section).

[992] Section 1011(1) defines "deferral of budget authority." *See supra* p. 309. Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[993] *See supra* pp. 312-314.

[994] *See supra* pp. 315-318.

1012[995] or 1013,[996] and, for purposes of this part, such report shall be considered a special message transmitted under section 1012[997] or 1013.[998]

(b) INCORRECT CLASSIFICATION OF SPECIAL MESSAGE. -- If the President has transmitted a special message to both Houses of Congress in accordance with section 1012[999] or 1013,[1000] and the Comptroller General believes that the President so transmitted the special message in accordance with one of those sections when the special message should have been transmitted in accordance with the other of those sections, the Comptroller General shall make a report to both Houses of the Congress setting forth his reasons.[1001]

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[995] *See supra* pp. 312-314.

[996] *See supra* pp. 315-318.

[997] *See supra* pp. 312-314.

[998] *See supra* pp. 315-318.

[999] *See supra* pp. 312-314.

[1000] *See supra* pp. 315-318.

[1001] Section 206(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Codification of Law Regarding Deferral Authority," provides: "Sections 1015 and 1016 of the Impoundment Control Act of 1974 are reaffirmed." Pub. L. No. 100-119, § 206(c), 101 Stat. 754, 786 (Sept. 29, 1987). The joint statement of managers accompanying the conference report on the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 explained:

> 9. Codification of Law Regarding Deferral Authority
>
> *Current Law*
>
> The Supreme Court in *Immigration and Naturalization* v. *Chadha,* 462 U.S. 919 (1983), held legislative vetoes unconstitutional. Applying Chadha, the Court of Appeals in *City of New Haven* v. *United States,* 809 F. 2d 900 (D.C. Cir. 1987), struck down Section 1013 of the 1974 Impoundment Control Act, dealing with deferrals . . . .
>
> Section 1015 of the 1974 Impoundment Control Act directs the Comptroller General to report to Congress when he determines that the President has failed to transmit a special message with respect to a deferral or rescission, or has incorrectly classified an action in such message. Section

(continued...)

SUITS BY COMPTROLLER GENERAL

SEC. 1016.[1002] If, under this title, budget authority[1003] is required to be made available for obligation and such budget authority is not made available for obligation, the Comptroller General is hereby expressly empowered, through attorneys of his own selection, to bring a civil action in the United States District Court for the District of Columbia to require such budget authority to be made available for obligation, and such court is hereby expressly empowered to enter in such civil

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[1001](...continued)
1016 of the Act empowers the Comptroller General to bring a civil action to require that unlawfully impounded budget authority be made available for obligation. The Comptroller General has expressed the view that he lacks authority to take any action to compel the release of impounded funds since such authority was linked to the invalidated Section 1013.

Senate Amendment

The Senate amendment (Section 229) enacts a new Section 1013 that codifies the *New Haven* decision and General Accounting Office administrative interpretations by prohibiting policy deferrals and providing that deferrals will be permissible only: (1) for contingencies, (2) for efficiency, or (3) as specifically provided for by law. . . .

The Senate amendment also reaffirms the Comptroller General's authority under Sections 1015 and 1016 of the Act to initiate suits to compel the release of impounded funds and his duty to safeguard Congress' institutional interest in the spending process.

Conference Agreement

The House recedes and concurs in the Senate amendment.

H.R. CONF. REP. No. 100-313, 100th Cong., 1st Sess. 66-67 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 739, 766-67.

[1002] Section 206(c) of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, entitled "Codification of Law Regarding Deferral Authority," provides: "Sections 1015 and 1016 of the Impoundment Control Act of 1974 are reaffirmed." Pub. L. No. 100-119, § 206(c), 101 Stat. 754, 786 (Sept. 29, 1987). For an excerpt from the joint statement of managers accompanying the conference report on that bill, see *supra* note 1001 (at the end of the previous section).

[1003] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

action, against any department, agency, officer, or employee of the United States, any decree, judgment, or order which may be necessary or appropriate to make such budget authority available for obligation. The courts shall give precedence to civil actions brought under this section, and to appeals and writs from decisions in such actions, over all other civil actions, appeals, and writs. No civil action shall be brought by the Comptroller General under this section until the expiration of 25 calendar days[1004] of continuous session of the Congress following the date on which an explanatory statement by the Comptroller General of the circumstances giving rise to the action contemplated has been filed with the Speaker of the House of Representatives and the President of the Senate.

[1004] Section 1011(5) defines this 25-day period. *See supra* p. 310.

PROCEDURE IN HOUSE AND SENATE

SEC. 1017. (a) REFERRAL. -- Any rescission bill[1005] introduced with respect to a special message or impoundment resolution[1006] introduced with respect to a proposed deferral of budget authority[1007] shall be referred to the appropriate committee of the House of Representatives or the Senate, as the case may be.

(b) DISCHARGE OF COMMITTEE. --

(1) If the committee to which a rescission bill[1008] or impoundment resolution[1009] has been referred has not reported it at the end of 25 calendar days[1010] of continuous session of the Congress after its introduction, it is in order to move either to discharge the committee from further consideration of the bill or resolution or to discharge the committee from further consideration of any other rescission bill with respect to the special message or impoundment resolution with respect to the same proposed deferral,[1011] as the case may be, which has been referred to the committee.

[1005] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[1006] Section 1011(4) defines "impoundment resolution." *See supra* p. 310.

[1007] Section 1011(1) defines "deferral of budget authority." *See supra* p. 309. Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[1008] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[1009] Section 1011(4) defines "impoundment resolution." *See supra* p. 310.

[1010] Section 1011(5) defines this 25-day period. *See supra* p. 310.

[1011] Section 1011(1) defines "deferral of budget authority." *See supra* p. 309.

(2) A motion to discharge may be made only by an individual favoring the bill or resolution, may be made only if supported by one-fifth of the Members of the House involved (a quorum being present), and is highly privileged in the House and privileged in the Senate (except that it may not be made after the committee has reported a bill or resolution with respect to the same special message or the same proposed deferral,[1012] as the case may be); and debate thereon shall be limited to not more than 1 hour, the time to be divided in the House equally between those favoring and those opposing the bill or resolution, and to be divided in the Senate equally between, and controlled by, the majority leader and the minority leader or their designees. An amendment to the motion is not in order,[1013] and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(c) FLOOR CONSIDERATION IN THE HOUSE. --

(1) When the committee of the House of Representatives has reported, or has been discharged from further consideration of, a rescission bill[1014] or impoundment resolution,[1015] it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the bill or resolution. The motion shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to

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[1012] Section 1011(1) defines "deferral of budget authority." *See supra* p. 309.

[1013] *Cf.* 131 CONG. REC. S4,503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

[1014] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[1015] Section 1011(4) defines "impoundment resolution." *See supra* p. 310.

reconsider the vote by which the motion is agreed to or disagreed to.

(2) Debate on a rescission bill[1016] or impoundment resolution[1017] shall be limited to not more than 2 hours, which shall be divided equally between those favoring and those opposing the bill or resolution. A motion further to limit debate shall not be debatable. In the case of an impoundment resolution, no amendment to, or motion to recommit, the resolution shall be in order. It shall not be in order to move to reconsider the vote by which a rescission bill or impoundment resolution is agreed to or disagreed to.

(3) Motions to postpone, made with respect to the consideration of a rescission bill[1018] or impoundment resolution,[1019] and motions to proceed to the consideration of other business, shall be decided without debate.

(4) All appeals from the decisions of the Chair relating to the applications of the Rules of the House of Representatives to the procedure relating to any rescission bill[1020] or impoundment resolution[1021] shall be decided without debate.

(5) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of

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[1016] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[1017] Section 1011(4) defines "impoundment resolution." *See supra* p. 310.

[1018] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[1019] Section 1011(4) defines "impoundment resolution." *See supra* p. 310.

[1020] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[1021] Section 1011(4) defines "impoundment resolution." *See supra* p. 310.

any rescission bill[1022] or impoundment resolution[1023] and amendments thereto (or any conference report thereon) shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions, amendments, and conference reports in similar circumstances.

(d) FLOOR CONSIDERATION IN THE SENATE. --

(1) Debate in the Senate on any rescission bill[1024] or impoundment resolution,[1025] and all amendments thereto (in the case of rescission bill) and debatable motions and appeals in connection therewith, shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(2) Debate in the Senate on any amendment to a rescission bill[1026] shall be limited to 2 hours, to be equally divided between, and controlled by, the mover and the manager of the bill. Debate on any amendment to an amendment, to such a bill, and debate on any debatable motion or appeal in connection with such a bill or impoundment resolution[1027] shall be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the bill or resolution, except that in the event the manager of the bill or resolution is in favor of any such amendment, motion, or appeal, the time

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[1022] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[1023] Section 1011(4) defines "impoundment resolution." *See supra* p. 310.

[1024] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[1025] Section 1011(4) defines "impoundment resolution." *See supra* p. 310.

[1026] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[1027] Section 1011(4) defines "impoundment resolution." *See supra* p. 310.

in opposition thereto, shall be controlled by the minority leader or his designee. No amendment[1028] that is not germane[1029] to the provisions of a rescission bill shall be received.[1030] Such leaders, or either of them, may, from the time under their control on the passage of a rescission bill or impoundment resolution, allot additional time to any Senator during the consideration of any amendment, debatable motion, or appeal.

(3) A motion to further limit debate is not debatable. In the case of a rescission bill,[1031] a motion to recommit (except a motion to recommit with instructions to report back within a specified number of days, not to exceed 3, not counting any day on which the Senate is not in session) is not in order. Debate on any such motion to recommit shall be limited to one hour, to be equally divided between, and controlled by, the mover and the manager of the concurrent resolution. In the case of an impoundment resolution,[1032] no amendment or motion to recommit is in order.[1033]

(4) The conference report on any rescis-

[1028] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303(a)).

[1029] For a discussion of germaneness, see *supra* note 329.

[1030] The language that such amendments "shall not be received" merely permits a Senator to raise a point of order after time on the amendment has expired, and does not authorize the Chair to rule on the amendment at the Chair's initiative. *See supra* note 330 (regarding that language in section 305(b)(2)).

[1031] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[1032] Section 1011(4) defines "impoundment resolution." *See supra* p. 310.

[1033] *Cf.* 131 CONG. REC. S4,503-04 (1985); Senate Precedent PRL19850422-002 (Apr. 22, 1985) (LEGIS, Rules database) (When the Senate suspends the rules and thereby calls up an amendment to a measure which the provisions of public law provide is unamendable (under Public Law 98-473, for military or paramilitary assistance to the contra forces in Nicaragua), the amendment need not be germane to the measure.).

sion bill[1034] shall be in order in the Senate at any time after the third day (excluding Saturdays, Sundays, and legal holidays) following the day on which such a conference report is reported and is available to Members of the Senate. A motion to proceed to the consideration of the conference report may be made even though a previous motion to the same effect has been disagreed to.

(5) During the consideration of the Senate of the conference report on any rescission bill,[1035] debate shall be limited to 2 hours, to be equally divided between, and controlled by, the majority leader and minority leader or their designees. Debate on any debatable motion or appeal related to the conference report shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report.

(6) Should the conference report be defeated, debate on any request for a new conference and the appointment of conferees shall be limited to one hour, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee, and should any motion be made to instruct the conferees before the conferees are named, debate on such motion shall be limited to 30 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. Debate on any amendment to any such instructions shall be limited to 20 minutes, to be equally divided between, and controlled by, the mover and the manager of the conference report. In all cases when the manager of the conference report is in favor of any motion, appeal, or amendment, the time in opposition shall

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[1034] Section 1011(3) defines "rescission bill." *See supra* p. 310.

[1035] Section 1011(3) defines "rescission bill." *See supra* p. 310.

be under the control of the minority leader or his designee.

(7) In any case in which there are amendments in disagreement, time on each amendment shall be limited to 30 minutes, to be equally divided between, and controlled by, the manager of the conference report and the minority leader or his designee. No amendment[1036] that is not germane[1037] to the provisions of such amendments shall be received.[1038]

[1036] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303(a)).

[1037] For a discussion of germaneness, see *supra* note 329.

[1038] The language that such amendments "shall not be received" merely permits a Senator to raise a point of order after time on the amendment has expired, and does not authorize the Chair to rule on the amendment at the Chair's initiative. *See supra* note 330 (regarding that language in section 305(b)(2)).

BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

TITLE II
DEFICIT REDUCTION PROCEDURES

SEC. 200. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE. -- This title may be cited as the "Balanced Budget and Emergency Deficit Control Act of 1985".[1039]

[1039] The Balanced Budget and Emergency Deficit Control Act of 1985, Pub. L. No. 99-177, tit. II, 99 Stat. 1037, 1038 (Dec. 12, 1985), *amended by* the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, tit. I-II, 101 Stat. 754 (Sept. 29, 1987), *and amended by* the Budget Enforcement Act of 1990, Pub. L. No. 101-508, tit. XIII, _____ Stat. _____, _____ (Nov. 5, 1990), *and further amended* (codified as amended at 2 U.S.C. § § 901-922).

Although a President's statement upon signing a piece of legislation has no validity as legislative history, as the President issues it after Congress has exercised the legislative powers that article I, section 1 of the Constitution vests exclusively with Congress, the following are President Reagan's statements upon signing Public Law 99-177 (of which Gramm-Rudman-Hollings is a part) and Public Law 101-119 (which revised and extended Gramm-Rudman-Hollings):

> **Statement on Signing the Bill Increasing the Public Debt Limit and Enacting the Balanced Budget and Emergency Deficit Control Act of 1985**
> *December 12, 1985*
>
> Today I have signed H.J. Res. 372, which increases the statutory limit on the public debt and includes the Balanced Budget and Emergency Deficit Control Act of 1985, also known as the Gramm-Rudman-Hollings amendment. With the passage of this landmark legislation, the Congress has made an important step toward putting our fiscal house in order. Deficit reduction is no longer simply our hope and our goal; deficit reduction is now the law. From here to the end of the decade, mandated cuts can put the deficit on a declining path and eliminate governmental overspending by 1991. It is my hope that we will move even one step further to secure the gains we have made by adopting a balanced budget amendment to the Constitution.
>
> Deficits have threatened our economic well-being for too long. For years the Congress has talked about the deficit, and now it has done something about it. But the tough work of controlling Federal spending still lies ahead. It is important that we now cooperate in good faith toward building a solid

(continued)

[1039](...continued)
fiscal foundation for economic growth. This legislation mandates that the President and the Congress work together to eliminate the deficit over the next 5 years. The first step in that process will begin early next year. At that time I anticipate that we will have to take some significant across-the-board reductions in a wide range of programs. That means cutting back on the expansion of government, an expansion which has slowed, but which still continues apace. Whether increased government spending is financed through taxes or borrowing, it imposes a heavy burden on the private economy, the source of our prosperity and the foundation of our hopes for the future. That is why increasing taxes is not an option: Deficit reduction must mean spending reductions. We must also never lose sight of the necessity to maintain a strong national defense. Restoring our defenses has been vital not only to our security but to the cause of freedom. Today our once ailing alliances are stronger than before. America is looked upon with renewed admiration around the world, and the principles of human freedom that we embody are no longer in retreat. I am confident that implementing our previous agreements with Congress for steady real growth in defense will keep our defenses secure.

In signing this bill, I am mindful of the serious constitutional questions raised by some of its provisions. The bill assigns a significant role to the Director of the Congressional Budget Office and the Comptroller General in calculating the budget estimates that trigger the operative provisions of the bill. Under the system of separated powers established by the Constitution, however, executive functions may only be performed by officers in the executive branch. The Director of the Congressional Budget Office and the Comptroller General are agents of Congress, not officers in the executive branch. The bill itself recognizes this problem and provides procedures for testing the constitutionality of the dubious provisions. The bill also provides a constitutionally valid alternative mechanism should the role of the Director of the Congressional Budget Office and the Comptroller General be struck down. It is my hope that these outstanding constitutional questions can be promptly resolved.

Similar constitutional concerns are raised by a provision in the bill authorizing the President to terminate or modify defense contracts for deficit reduction purposes, but only if the action is approved by the Comptroller General. Under our constitutional system, an agent of Congress may not exercise such supervisory authority over the President. As the Supreme Court made clear in its *Chadha* decision, Congress can veto Presidential action only through the constitutionally established procedure of passing a bill through both Houses and presenting it to the president.

My administration alerted Congress to these various problems throughout the legislative process in an effort to achieve a bill free of constitutionally suspect provisions. Although we were unsuccessful in this goal, I am nonetheless signing the bill. In doing so, I am in no sense dismissing the constitutional problems or acquiescing in a violation of the system of separated powers carefully crafted by the framers of the Constitution. Rather, it is my hope that the constitutional problems will be promptly resolved so that the vitally important business of deficit reduction can proceed.

(continued...)

[1039] (...continued)

In addition, the legislation also increases the debt ceiling so that the Federal Government can continue to meet its financial obligations.

The many Senators and Representatives whose hard work has borne fruit in this bill are to be commended. The American people expect their elected officials to take action now to reduce the size of government and to set upon a reasonable and equitable course to eliminate Federal budget deficits. I am unequivocally committed to that goal. I am hopeful and confident that Congress will act responsibly in meeting its obligations under the bill and thus in future years will render implementations of the automatic budget reduction mechanism unnecessary. Deficit reduction is on the horizon. We are embarked on this promising new path together, and together we will make it work.

Statement on Signing the Bill Increasing the Public Debt Limit and Enacting the Balanced Budget and Emergency Deficit Control Act of 1985, 1985 PUB. PAPERS 1,471-72 (Dec. 12, 1985).

Federal Debt Limit and Deficit reduction Bill

Remarks on Signing H.J. Res. 324 Into Law.
September 29, 1987

The President. Good afternoon. Most bill signing ceremonies are happy occasions; this one is not. This is a bill that I'll sign with great reluctance, and this is a bill that does not do justice to the American people. The bill contains two main provisions.

The first provision extends the Federal Government's authority to borrow funds. This is an action that we just take to prevent the Government from defaulting on its obligations, and I have no objection whatsoever to doing so. In short, this extension of the debt limit is necessary and unavoidable.

But the second provision is one to which it is my duty as President to voice the strongest possible objection. For this second provision involves a so-called fix of the Gramm-Rudman-Hollings deficit reduction law -- a fix that doesn't fix things in the right way. Putting the country on a reliable track to lower deficits and, eventually a balanced budget -- well, that's my goal. Unfortunately, the majority in Congress have already shown the inability to make the tough choices to reach those goals.

This administration's tax cuts fostered economic growth, so that over a 5-year period, Federal revenues have actually gone up more than 25 percent. But during the same period, Federal spending went up 46 percent. From 1982 to 1987, for every dollar cut from the defense budget, Congress added two dollars -- and I repeat, two dollars -- to domestic spending. Pork-barrel spending, spending for pressure groups, spending with utter irresponsibility -- that is the main cause of the Federal deficit. And now Congress sends me this bill, a bill that I must sign to keep the Federal Government from default.

(continued...)

[1039](...continued)

The Gramm-Rudman-Hollings "fix" is different from the original version. This measure says that, if by a certain date Congress and the administration have failed to agree upon a budget that cuts the Federal deficit by $23 billion, then that amount -- $23 billion -- will automatically be sequestered, a fancy term for an across-the-board budget cut.

The catch is this: In this version, even larger portions of the domestic budget will be exempt. This means that the cuts in the defense budget will be deep -- very deep. Our nation's security would be undermined, and my hand in dealing with the Soviets would be weakened at a time when we're engaged with the Soviets in sensitive and significant nuclear arms reduction talks.

With this bill, then, Congress is telling me that we must pay for its uncontrolled domestic spending by endangering our national security or by raising your taxes, or both. Under their arrangement, the bill would go directly to the American people, but I will not allow the American people to be blackmailed into higher taxes. There are some in Congress who think that they have me trapped -- that this time I'll have no choice but to raise taxes or gut our defenses.

But, well, I'm reminded of a story. It's a true story. It concerns an American commander during the Second World War. In the Battle of the Bulge, the enemy entered the American perimeter with a surrender ultimatum. They demanded this surrender, and the commander sent back a response that consisted of only one word. The word was "nuts." To those who say we must weaken America's defenses, they're nuts. To those who say we must raise the tax burden on the American people, they, too, are nuts.

For there's a third choice, the right choice. It's the choice I campaigned for in '80 and again in '84. It's the choice embodied in the Economic Bill of Rights that I proposed this past Fourth of July weekend. It is to cut the excesses from the domestic budget, to impose upon the domestic budget once and for all a sense of responsibility and the national good. The whole notion of fair treatment that forms such an essential part of our national character -- the whole notion of fair treatment that demands that if defense spending is reduced, than a wider range of domestic accounts must be reduced as well.

The responsibility is on the shoulders of the majority in Congress. And I'm directing my Cabinet and my staff to do everything they can to cooperate and to reduce unnecessary spending on domestic programs. America can avoid a fiscal disaster, but Congress will not do it by putting their hand in your pocket or with a get-soft defense program.

There are some in Congress who support our goals to reduce the deficit. And let's take a pledge today to stand together with a common goal, a common purpose: to reject those who continue to want to spend more, tax more, and defend less; to protect America's interests and not the special interests.

(continued...)

[1039](...continued)

> Yes, I'll sign this bill. As I do so, from this moment on, the big spenders in Congress will have a fight on their hands.
>
> [*At this point, the President signed the bill.*]
>
> **Reporter.** Are there any big spenders in Congress up there, Mr. President?
>
> **The President.** What did he say?
>
> Q. Any big spenders up here? [Laughter]
>
> Q. You're not President yet.
>
> Q. He's the President.
>
> **The President.** No, if you want to show your pleasure with what I said, give them a hand. [Applause] They're on our side.

Federal Debt Limit and Deficit reduction Bill; Remarks on Signing H.J. Res. 324 Into Law, 23 WEEKLY COMP. PRES. DOC. 1,090-91 (Nov. 5, 1990). According to the White House transcript, the President spoke at 3:21 p.m. in the Rose Garden at the White House. *See id.* at 1,091.

Title I of Public Law 99-177 does not deal with the budget process. Title I provides:

Joint Resolution

Increasing the statutory limit on the public debt.

> *Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That subsection (b) of section 3101 of title 31, United States Code, is amended by striking out the dollar limitation contained in such subsection and inserting in lieu thereof "$1,847,800,000,000, or $2,078,700,000,000 on and after October 1, 1985,".
>
> SEC. 2. MINIMUM CORPORATE TAX BY CORPORATIONS.
>
> (a) Notwithstanding any other provision of this joint resolution the Senate Committee on Finance is directed to report to the Senate by July 1, 1986, legislation providing for payment of an alternative minimum corporate tax by corporations on the broadest feasible definition of income to assure that all of those with economic income pay their fair share of taxes: *Provided,* That said alternative minimum corporate tax shall take effect for corporate tax years commencing on or after October 1, 1986. The revenue raised by this tax shall be applied to reduce the Federal deficit.
>
> (b) Notwithstanding any other provision of this joint resolution, the

(continued...)

(b) TABLE OF CONTENTS. --

Sec. 200. **Short title and table of contents.**

PART A -- CONGRESSIONAL BUDGET PROCESS

Subpart I -- Congressional Budget

[1039] (...continued)
Committee on Ways and Means is directed to report to the House of Representatives legislation providing for payment of an alternative minimum corporate tax by corporations based upon the broadest feasible definition of income to assure that all of those with economic income pay their fair share of taxes: *Provided*, That, the Committee on Ways and Means shall report such legislation prior to October 1, 1986.

SEC. 3. ACHILLE LAURO HIJACKING.

(a) The Senate finds that --

(1) the four men identified as the hijackers of the Achille Lauro were responsible for brutally murdering an innocent American citizen, Leon Klinghoffer, and for terrorizing hundreds of innocent crew members and passengers for two days;

(2) the United States urges all countries to aid in the swift apprehension, prosecution, and punishment of the terrorists; and

(3) the United States should not tolerate any country providing safe harbor or safe passage to the terrorists.

(b) It is the sense of the Senate that --

(1) the United States demands that no country provide safe harbor or safe passage to these terrorists;

(2) the United States expects full cooperation of all countries in the apprehension, prosecution, and punishment of these terrorists;

(3) the United States cannot condone the release of terrorists or the making of concessions to terrorists; and

(4) the United States identify those individuals responsible for the seizure of the Achille Lauro and the cold-blooded murder of Leon Klinghoffer, as well as those countries and groups that aid and abet such terrorist activities, and take the strongest measures to ensure that those responsible for this brutal act against an American citizen are brought to justice.

Pub. L. No. 99-177, tit. I, 99 Stat. 1037 (Dec. 12, 1985).

Sec. 201. Congressional budget.

Subpart II -- Amendments to Title IV of the Congressional Budget Act of 1974

Sec. 211. New spending authority.
Sec. 212. Credit authority.
Sec. 213. Description by Congressional Budget Office.
Sec. 214. General Accounting Office study; off-budget agencies; member user group

Subpart III -- Additional Provisions to Improve Budget Procedures

Sec. 221. Congressional Budget Office.
Sec. 222. Current services budget for congressional budget purposes.
Sec. 223. Study of off-budget agencies.
Sec. 224. Changes in functional categories.
Sec. 225. Jurisdiction of Committee on Government Operations.
Sec. 226. Continuing study of congressional budget process.
Sec. 227. Early election of committees of the House.
Sec. 228. Rescissions and transfers in appropriation bills.

Subpart IV -- Technical and Conforming Amendments

Sec. 231. Table of contents.
Sec. 232. Additional technical and conforming amendments.

PART B -- BUDGET SUBMITTED BY THE PRESIDENT

Sec. 241. Submission of President's budget; maximum deficit amount may not be exceeded.
Sec. 242. Supplemental budget estimates and changes.

PART C -- EMERGENCY POWERS TO ELIMINATE DEFICITS IN EXCESS OF MAXIMUM DEFICIT AMOUNT

Sec. 251. Reporting of excess deficits.
Sec. 252. Presidential order.
Sec. 253. Compliance report by Comptroller General.
Sec. 254. Congressional action.
Sec. 255. Exempt programs and activities.
Sec. 256. Exceptions, limitations, and special rules.
Sec. 257. Definitions.

PART D -- BUDGETARY TREATMENT OF SOCIAL SECURITY TRUST FUNDS

Sec. 261. Treatment of trust funds.

PART E -- MISCELLANEOUS AND RELATED PROVISIONS

Sec. 271. Waivers and suspensions; rulemaking powers.
Sec. 272. Restoration of trust fund investments.
Sec. 273. Revenue estimates.
Sec. 274. Judicial review.
Sec. 275. Effective dates.

PART A
CONGRESSIONAL BUDGET PROCESS

Subpart I
Congressional Budget

SEC. 201. CONGRESSIONAL BUDGET.

(a) DEFINITIONS. --

(1) Section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by adding at the end thereof the following new paragraphs:

". . . ."[1040]

(2) Paragraph (2)[1041] of section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended by inserting before the comma the following: "or to collect offsetting receipts.".

(b) CONGRESSIONAL BUDGET PROCESS. -- Title III of the Congressional Budget Act of 1974 is amended to read as follows:

[1040] Section 201(a)(1) added sections 3(6) through 3(10) of the Congressional Budget Act. *See supra* pp. 16-19.

[1041] *See supra* p. 11.

". . . ."[1042]

[1042] *See supra* pp. 41-158.

Subpart II
Amendments to Title IV of the Congressional Budget Act of 1974

SEC. 211. NEW SPENDING AUTHORITY.

Section 401 of the Congressional Budget Act of 1974 is amended to read as follows:

". . . ."[1043]

[1043] *See supra* pp. 199-210.

SEC. 212. CREDIT AUTHORITY.

Section 402 of the Congressional Budget Act of 1974 is amended to read as follows:

". . . ."[1044]

[1044] *See supra* pp. 211-212.

SEC. 213. DESCRIPTION BY CONGRESSIONAL BUDGET OFFICE.

(a) CONGRESSIONAL BUDGET OFFICE ANALYSIS. -- Section 403(a) of the Congressional Budget Act of 1974 is amended by striking out "and" at the end of paragraph (2), by striking out the period and inserting "; and" at the end of paragraph (3), and by inserting at the end thereof the following new paragraph:

> "(4) a description of each method for establishing a Federal financial commitment contained in such bill or resolution.".

(b) CONFORMING AMENDMENT. -- The second sentence of section 403(a) of such Act is amended by striking out "estimates and comparison" and inserting in lieu thereof "estimates, comparison, and description".

SEC. 214. GENERAL ACCOUNTING OFFICE STUDY; OFF-BUDGET AGENCIES; MEMBER USER GROUP.

Title IV of the Congressional Budget Act of 1974 is amended by inserting at the end thereof the following new sections:

"* * * *"[1045]

[1045] Section 214 added sections 405 through 407 of the Congressional Budget Act. *See supra* pp. 220-223.

Subpart III
Additional Provisions to Improve Budget Procedures

SEC. 221. CONGRESSIONAL BUDGET OFFICE.

(a) Reporting Date. -- Section 202(f)(1) of the Congressional Budget Act of 1974 is amended by striking out "April 1" in the first sentence and inserting in lieu thereof "February 15".

(b) Additional Reporting Requirement. -- Section 202(f) of such Act is further amended by adding at the end thereof the following new paragraph:

> "(3) On or before January 15 of each year, the Director, after consultation with the appropriate committees of the House of Representatives and Senate, shall submit to the Congress a report listing
>
> > "(A) all programs and activities funded during the fiscal year ending September 30 of that calendar year for which authorizations for appropriations have not been enacted for that fiscal year, and
> >
> > "(B) all programs and activities for which authorizations for appropriations have been enacted for the fiscal year ending September 30 of that calendar year, but for which no authorizations for appropriations have been enacted for the fiscal year beginning October 1 of that calendar year.".

(c) Studies. -- Section 202 of such Act is further amended by adding at the end thereof the following new subsection:

> **"(h) Studies. -- The Director shall conduct continuing studies to enhance comparisons of budget outlays,[1046] credit authority,[1047] and tax expenditures.".[1048]**

[1046] Section 3(1) defines "budget outlays." *See supra* p. 11.

[1047] Section 3(10) defines "credit authority." *See supra* p. 19.

[1048] Section 3(3) defines "tax expenditures." *See supra* p. 15.

SEC. 222. CURRENT SERVICES BUDGET FOR CONGRESSIONAL BUDGET PURPOSES.

(a) Current Services Budget. -- The first sentence of section 1109(a) of title 31, United States Code, is amended by striking out "Before November 11 of each year" and inserting in lieu thereof "On or before the first Monday after January 3 of each year (on or before February 5 in 1986)".

(b) Joint Economic Committee Review. -- Section 1109(b) of title 31, United States Code, is amended by striking out "January 1" and inserting in lieu thereof "March 1".

SEC. 223. STUDY OF OFF-BUDGET AGENCIES.

Section 606[1049] of the Congressional Budget Act of 1974 is repealed.

[1049] *See supra* note 848.

SEC. 224. CHANGES IN FUNCTIONAL CATEGORIES.

Section 1104(c) of title 31, United States Code, is amended by adding at the end thereof the following new sentence: "Committees of the House of Representatives and Senate shall receive prompt notification of all such changes.".

SEC. 225. JURISDICTION OF COMMITTEE ON GOVERNMENT OPERATIONS.

Clause 1(j) of Rule X of the Rules of the House of Representatives is amended by inserting after item (5) the following new item:

> "(6) Measures providing for off-budget treatment of Federal agencies or programs.".

SEC. 226. CONTINUING STUDY OF CONGRESSIONAL BUDGET PROCESS.

Clause 3 of Rule X of the Rules of the House of Representatives is amended by adding at the end thereof the following:

> **"(i) The Committee on Rules shall have the function of reviewing and studying, on a continuing basis, the congressional budget process, and the committee shall, from time to time, report its findings and recommendations to the House.".**

SEC. 227. EARLY ELECTION OF COMMITTEES OF THE HOUSE.

Clause 6(a)(1) of Rule X of the Rules of the House of Representatives is amended by striking out "at" and inserting in lieu thereof "within the seventh calendar day beginning after", and by adding at the end thereof the following new sentence: "It shall always be in order to consider resolutions recommended by the respective party caucuses to change the composition of standing committees.".

SEC. 228. RESCISSIONS AND TRANSFERS IN APPROPRIATION BILLS.

(a) RESCISSIONS. -- Clause 2(b) of Rule XXI of the Rules of the House of Representatives is amended by inserting before the period at the end thereof the following: ", and except rescissions of appropriations contained in appropriation Acts".[1050]

(b) TRANSFERS. -- Clause 6 of Rule XXI of the Rules of the House of Representatives is amended by inserting before the period at the end thereof the following: ", and shall not apply to transfers of unexpended balances within the department or agency for which they were originally appropriated, reported by the Committee on Appropriations".

[1050] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

Subpart IV
Technical and Conforming Amendments

SEC. 231. TABLE OF CONTENTS.

The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 with respect to title III is amended to read as follows:

"....."[1051]

[1051] *See supra* pp. 5-6.

SEC. 232. ADDITIONAL TECHNICAL AND CONFORMING AMENDMENTS.

(a) TABLE OF CONTENTS. -- The table of contents set forth in section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended --

(1) by striking out the item relating to section 402 and inserting in lieu thereof the following new item:

"Sec. 402. Legislation providing new credit authority.";

(2) by inserting after the item relating to section 404 the following new items:

"Sec. 405. Study by the General Accounting Office of forms of Federal financial commitment that are not reviewed annually by Congress.
"Sec. 406. Off-budget agencies, programs, and activities.
"Sec. 407. Member user group."; and

(3) by striking out the item relating to section 606.

(b) TECHNICAL AMENDMENT. -- Paragraph (4) of section 3 of the Congressional Budget and Impoundment Control Act of 1974 is amended --

(1) by adding "and" after the semicolon at the end of subparagraph (A);

(2) by striking out subparagraph (B); and

(3) by redesignating subparagraph (C) as subparagraph (B).

(c) TECHNICAL AMENDMENT. -- Subparagraph (2) of clause 4(b) of rule X of the Rules of the House of Representatives is amended by striking out "first concurrent resolution" and inserting in lieu thereof "concurrent resolutions".

(d) TECHNICAL AMENDMENT. -- Clause 4(g) of rule X of the Rules of the House of Representatives is amended by striking out "March 15" and inserting in lieu thereof "February 25".

(e) TECHNICAL AMENDMENT. -- Clause 2(l)(1) of rule XI of the Rules of the House of Representatives is amended --

(1) by striking out "(except as provided in subdivision (C))" in subparagraph (A) thereof; and

(2) by repealing subparagraph (C) thereof.

(f) TECHNICAL AMENDMENT. -- Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is amended by inserting "(1)" after "section 308(a)", and by striking out "new budget authority[1052] or new or increased tax expenditures"[1053] and inserting in lieu thereof "new budget authority (other than continuing appropriations), new spending authority described in section 401(c)(2)[1054] of such Act, new credit authority,[1055] or an increase or decrease in revenues or tax expenditures".

(g) TECHNICAL AMENDMENT. -- Rule XLIX of the Rules of the House of Representatives is amended by striking out ", 304, or 310" in clause 1 and inserting in lieu thereof "or 304".

(h) TECHNICAL AMENDMENT. -- Clause 1(e)(2) of Rule X of the Rules of the House of Representatives is amended by inserting before the period at the end thereof the following: ", and any resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

[1052] Section 3(2) defines "budget authority." *See supra* pp. 11-13.

[1053] Section 3(3) defines "tax expenditures." *See supra* p. 15.

[1054] *See supra* pp. 203-206.

[1055] Section 402(b) of the Congressional Budget Act defines "*new* credit authority" (*see supra* p. 212), in part by reference to the definition of "credit authority" in section 3(10) of that Act (*see supra* p. 19).

PART B
BUDGET SUBMITTED BY THE PRESIDENT

SEC. 241. SUBMISSION OF PRESIDENT'S BUDGET; MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED.

(a) SUBMISSION OF PRESIDENT'S BUDGET. -- The first sentence of section 1105(a) of title 31, United States Code, is amended by striking out "During the first 15 days of each regular session of Congress" and inserting in lieu thereof the following: "On or before the first Monday after January 3 of each year (on or before February 5 in 1986)".

(b) MAXIMUM DEFICIT AMOUNT MAY NOT BE EXCEEDED. -- Section 1105 of title 31, United States Code, is amended by adding at the end thereof the following new subsection:

> "(f)(1) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared on the basis of the best estimates then available, in such a manner as to ensure that the deficit for such fiscal year shall not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7) of section 3 of the Congressional Budget and Impoundment Control Act of 1974.
>
> "(2) The deficit set forth in the budget so transmitted for any fiscal year shall not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7) of section 3 of the Congressional Budget and Impoundment Control Act of 1974, with budget outlays and Federal revenues at

such levels as the President may consider most desirable and feasible.

"(3) Paragraphs (1) and (2) shall not apply if a declaration of war by the Congress is in effect.".

SEC. 242. SUPPLEMENTAL BUDGET ESTIMATES AND CHANGES.

(a) Change in Date of Submission. -- The first sentence of section 1106(b) of title 31, United States Code, is amended by striking out "April 11 and".

(b) Revisions and Supplemental Summaries. -- Section 1106 of title 31 of such Code is further amended by adding at the end thereof the following new subsection:

> **"(c) Subsection (f) of section 1105 shall apply to revisions and supplemental summaries submitted under this section to the same extent that such subsection applies to the budget submitted under section 1105(a) to which such revisions and summaries relate.".**

PART C
EMERGENCY POWERS TO ELIMINATE DEFICITS[1056] IN EXCESS OF MAXIMUM DEFICIT AMOUNT[1057]

SEC. 250. TABLE OF CONTENTS; STATEMENT OF BUDGET ENFORCEMENT THROUGH SEQUESTRATION;[1058] DEFINITIONS.[1059]

(a) TABLE OF CONTENTS. --

Sec. 250. Table of contents; budget enforcement statement; definitions.
Sec. 251. Enforcing discretionary spending limits.[1060]
Sec. 252. Enforcing pay-as-you-go.

[1056] Section 250(c)(1) (*see infra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1057] Section 250(c)(1) of Gramm-Rudman-Hollings (*see infra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See infra* pp. 403-429, 457-473.

[1058] Section 250(c)(2) defines "sequestration." *See infra* p. 372.

[1059] Section 13101(a) of the Budget Enforcement Act added section 250 (*see infra* p. 617), with the exception of section 250(c)(21), which section 13101(b) of the Budget Enforcement Act transferred from section 257(12) of Gramm-Rudman-Hollings. *See infra* p. 617.

[1060] Section 250(c)(1) of Gramm-Rudman-Hollings (*see infra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See infra* pp. 403-429, 457-473.

Sec. 253. Enforcing deficit[1061] targets.
Sec. 254. Reports and orders.
Sec. 255. Exempt programs and activities.
Sec. 256. Special rules.
Sec. 257. The baseline.[1062]
Sec. 258. Suspension in the event of war or low growth.
Sec. 258A. Modification of presidential order.
Sec. 258B. Alternative defense sequestration.[1063]
Sec. 258C. Special reconciliation process.

(b) GENERAL STATEMENT OF BUDGET ENFORCEMENT THROUGH SEQUESTRATION.[1064] -- This part provides for the enforcement of the deficit[1065] reduction assumed in House Concurrent Resolution 310 (101st Congress, second session)[1066] and the applicable deficit targets[1067] for fiscal years 1991 through 1995. Enforcement, as necessary, is to be implemented through sequestration --

(1) to enforce discretionary spending levels assumed in that resolution (with adjustments as provided hereinafter);

(2) to enforce the requirement that any legislation increasing direct spending[1068] or decreasing revenues be on a pay-as-you-go basis; and

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[1061] Section 250(c)(1) (*see infra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1062] Section 250(c) (*see infra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

[1063] Section 250(c)(2) defines "sequestration." *See infra* p. 372.

[1064] Section 250(c)(2) defines "sequestration." *See infra* p. 372.

[1065] Section 250(c)(1) (*see infra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1066] This is the budget resolution for fiscal year 1991 implementing the bipartisan budget agreement between the President and the joint leadership of Congress.

[1067] Section 601(a)(1) of the Congressional Budget Act defines "maximum deficit amount." *See supra* pp. 252-254.

[1068] Section 250(c)(8) defines "direct spending." *See infra* p. 376.

(3) to enforce the deficit targets specifically set forth[1069] in the Congressional Budget and Impoundment Control Act of 1974 (with adjustments as provided hereinafter);

applied in the order set forth above.[1070]

[1069] Section 601(a)(1) of the Congressional Budget Act defines "maximum deficit amount." *See supra* pp. 252-254.

[1070] Whereas Gramm-Rudman-Hollings used to enforce just deficit targets, the Budget Enforcement Act amended Gramm-Rudman-Hollings to set up a mechanism with three separate parts. These parts enforce:

(1) caps on discretionary spending,

(2) a regime of paying for entitlement and tax legislation as we go along, and

(3) maximum deficit amounts, or deficit targets.

Because the law (in section 253(g)) also provides that the President must adjust these deficit targets annually through fiscal year 1993 (*see infra* pp. 461-466), the first two types of enforcement will for all practical purposes govern the budget enforcement through fiscal year 1993. For fiscal years 1994 and 1995, all three types of enforcement may come into play, depending on whether the President who is in office on January 21, 1993, exercises his or her option under the law (in section 253(g)(1)(B)) to extend the current system of adjustments. *See infra* p. 462.

Section 250(b) lays out this three-part mechanism in general terms. The statement of managers accompanying the conference report on the Budget Enforcement Act explains generally the sequestration mechanisms that the Act added:

> TITLE XIII -- BUDGET ENFORCEMENT
>
> BUDGET ENFORCEMENT ACT OF 1990
>
> The conference agreement adds new enforcement mechanisms for discretionary spending[,] entitlements, and rece[ip]ts to preserve the deficit reduction achieved by this Act over the next five years. The conference agreement adds a pay-as-you-go mechanism to ensure that any new entitlement or receipt legislation will not increase the deficit. The conference agreement also sets forth limits (caps) on discretionary spending provided in the annual appropriations process for each of fiscal years 1991 through 1995, and enforces these through a mechanism to require across-the-board cuts within any category to make up for any overages. To enforce deficit targets in fiscal years 1994 and 1995, the conference agreement extends the existing Gramm-Rudman-Hollings mechanism through fiscal year 1995, but with new procedures to allow adjustment for revised economic and technical estimates, in

(continued...)

(c) DEFINITIONS.[1071] --

As used in this part:

(1) The terms "budget authority", "new budget authority", "outlays", and "deficit" have the meanings given to such terms in section 3 of the Congressional Budget and Impoundment Control Act of 1974 (but including the treatment specified in section 257(b)(3) of the Hospital Insurance Trust Fund[1072]) and the terms "maximum deficit amount" and "discretionary spending limit" shall mean the amounts specified in section 601[1073] of that Act as adjusted under sections 251 and 253 of this Act.

(2) The terms "sequester" and "sequestration" refer to or mean the cancellation of budgetary resources[1074]

[1070] (...continued)
1994 and 1995 at the President's option.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,151 (1990).

[1071] Section 13101(a) of the Budget Enforcement Act added section 250(c). *See infra* p. 617. For legislative history of section 250(c), see *infra* note 1117 (at the end of this section).

[1072] Section 257(b)(3) provides:

> (3) HOSPITAL INSURANCE TRUST FUND. -- Notwithstanding any other provision of law, the receipts and disbursements of the Hospital Insurance Trust Fund shall be included in all calculations required by this Act.

See infra p. 530.

For a discussion of whether section 257(b)(3) creates definitions for Gramm-Rudman-Hollings that differ from those for the Congressional Budget Act, see *infra* note 1536 (at section 257(b)(3)).

[1073] Section 601(a)(1) of the Congressional Budget Act defines "maximum deficit amount." *See supra* pp. 252-254. Section 601(a)(2) of the Congressional Budget Act defines "discretionary spending limit." *See supra* pp. 254-256.

[1074] Section 250(c)(6) defines "budgetary resources." *See infra* p. 375.

provided by discretionary appropriations[1075] or direct spending[1076] law.

(3) The term "breach" means, for any fiscal year, the amount (if any) by which new budget authority[1077] or outlays[1078] for that year (within a category[1079] of discretionary appropriations[1080]) is above that category's discretionary spending limit[1081] for new budget authority or outlays for that year, as the case may be.

(4) The term "category" means:

(A) For fiscal years 1991, 1992, and 1993, any of the following subsets of discretionary appropriations:[1082] defense,[1083] international,[1084] or domestic.[1085]

[1075] Section 250(c)(7) defines "discretionary appropriations." *See infra* p. 375.

[1076] Section 250(c)(8) defines "direct spending." *See infra* p. 376.

[1077] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

This reference to "new budget authority" means new budget authority as measured pursuant to the baseline requirements of section 257. *See infra* pp. 529-541.

[1078] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1079] Section 250(c)(4) defines "category." *See infra* p. 373.

[1080] Section 250(c)(7) defines "discretionary appropriations." *See infra* p. 375.

[1081] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See infra* pp. 403-429, 457-473.

[1082] Section 250(c)(7) defines "discretionary appropriations." *See infra* p. 375.

[1083] For the list of such accounts that appears in the joint statement of managers accompanying the Budget Enforcement Act, see *infra* pp. 384-385.

[1084] For the list of such accounts that appears in the joint statement of managers accompanying the Budget Enforcement Act, see *infra* pp. 386-387.

Discretionary appropriations in each of the three categories shall be those so designated in the joint statement of managers accompanying the conference report on the Omnibus Budget Reconciliation Act of 1990.[1086] New accounts[1087] or activities shall be categorized in consultation with the Committees on Appropriations and the Budget of the House of Representatives and the Senate.

(B) For fiscal years 1994 and 1995, all discretionary appropriations.[1088]

Contributions to the United States to offset the cost of Operation Desert Shield[1089] shall not be counted within any category.

(5) The term "baseline" means the projection (described in section 257[1090]) of current-year[1091] levels of new budget authority,[1092] outlays,[1093] receipts, and the surplus or

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[1085] (...continued)

[1085] For the list of such accounts that appears in the joint statement of managers accompanying the Budget Enforcement Act, see *infra* pp. 387-401.

[1086] *See infra* pp. 384-401.

[1087] Section 250(c)(11) defines "account." *See infra* p. 377.

[1088] Section 250(c)(7) defines "discretionary appropriations." *See infra* p. 375.

[1089] Note that section 251(b)(2)(D)(ii) defines "emergency Desert Shield costs." *See infra* p. 423.

[1090] *See infra* pp. 529-541.

[1091] Section 250(c)(13) defines "current year." *See infra* p. 377.

[1092] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1093] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

deficit[1094] into the budget year[1095] and the outyears.[1096]

(6) The term "budgetary resources" means --

(A) with respect to budget year[1097] 1991, new budget authority;[1098] unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; direct spending[1099] authority; and obligation limitations; or

(B) with respect to budget year[1100] 1992, 1993, 1994, or 1995, new budget authority;[1101] unobligated balances; direct spending[1102] authority; and obligation limitations.

(7) The term "discretionary appropriations" means budgetary resources[1103] (except to fund direct-spending

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[1094] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1095] Section 250(c)(12) defines "budget year." *See infra* p. 377.

[1096] Section 250(c)(14) defines "outyear." *See infra* p. 377.

[1097] Section 250(c)(12) defines "budget year." *See infra* p. 377.

[1098] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1099] Section 250(c)(8) defines "direct spending." *See infra* p. 376.

[1100] Section 250(c)(12) defines "budget year." *See infra* p. 377.

[1101] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1102] Section 250(c)(8) defines "direct spending." *See infra* p. 376.

[1103] Section 250(c)(6) defines "budgetary resources." *See supra* p. 375.

programs) provided in appropriation Acts.[1104]

(8) The term "direct spending" means --

(A) budget authority[1105] provided by law other than appropriation Acts;

(B) entitlement authority;[1106] and

(C) the food stamp program.

(9) The term "current" means, with respect to OMB[1107] estimates included with a budget submission under section 1105(a) of title 31, United States Code, the estimates consistent with the economic and technical assumptions underlying that budget and with respect to estimates made after submission of the fiscal year 1992 budget that are not included with a budget submission, estimates consistent with the economic and technical

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[1104] Does the language of this definition mean that changes to entitlement law *provided by appropriations acts* (notwithstanding rules 15 and 16 of the Standing Rules of the Senate) will be credited against spending within the discretionary spending caps (under section 251, *see infra* pp. 403-429) and not against the pay-as-you-go ledger (under section 252, *see infra* pp. 433-454)? Scorekeeping rule number 3 (*see infra* note 1162), referred to in sections 251(a)(7) (*see infra* pp. 407-408) and 252(d) (*see infra* pp. 436-437), and set forth in the joint statement of managers accompanying the conference report on the Budget Enforcement Act, supports that position, and the Office of Management and Budget has reportedly reached that conclusion. *But see* section 252(a) *infra* p. 433, which states that "[t]he purpose of this section is to assure that *any* legislation . . . affecting direct spending or receipts that increases the deficit . . . will trigger an offsetting sequestration." (emphasis added).

[1105] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" at least in part by reference to the definition of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1106] Section 3(9) of the Congressional Budget Act (*see supra* p. 18) defines "entitlement authority" to mean (at least for purposes of that Act) the authority described in section 401(c)(2)(C) of that Act (*see supra* p. 204). Section 250(c)(18) (*see infra* p. 378) provides that all references to entitlement authority shall include the mandatory appropriations accounts listed *infra* note 1162.

[1107] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See infra* p. 377.

assumptions underlying the most recently submitted President's budget.

(10) The term "real economic growth", with respect to any fiscal year, means the growth in the gross national product during such fiscal year, adjusted for inflation, consistent with Department of Commerce definitions.

(11) The term "account" means an item for which appropriations are made in any appropriation Act and, for items not provided for in appropriation Acts, such term means an item for which there is a designated budget account identification code number in the President's budget.

(12) The term "budget year" means, with respect to a session of Congress, the fiscal year of the Government that starts on October 1 of the calendar year in which that session begins.

(13) The term "current year" means, with respect to a budget year,[1108] the fiscal year that immediately precedes that budget year.

(14) The term "outyear" means, with respect to a budget year,[1109] any of the fiscal years that follow the budget year through fiscal year 1995.

(15) The term "OMB" means the Director of the Office of Management and Budget.

(16) The term "CBO" means the Director of the Congressional Budget Office.

(17) For purposes of sections 252 and 253, legisla-

[1108] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1109] Section 250(c)(12) defines "budget year." *See supra* p. 377.

tion enacted during the second session of the One Hundred First Congress shall be deemed to have been enacted before the enactment of this Act.

(18) As used in this part, all references to entitlement authority[1110] shall include the list of mandatory appropriations included in the joint explanatory statement of managers accompanying the conference report on the Omnibus Budget Reconciliation Act of 1990.[1111]

(19) The term "deposit insurance" refers to the expenses of the Federal Deposit Insurance Corporation and the funds it incorporates, the Resolution Trust Corporation, the National Credit Union Administration and the funds it incorporates, the Office of Thrift Supervision, the Comptroller of the Currency Assessment Fund, and the RTC Office of Inspector General.

(20) The term "composite outlay rate" means the percent of new budget authority[1112] that is converted to outlays[1113] in the fiscal year for which the budget authority is provided and subsequent fiscal years, as follows:

(A) For the international category,[1114] 46 percent for the first year, 20 percent for the second year, 16 percent for the third year, and 8 percent for the

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[1110] Section 3(9) of the Congressional Budget Act (*see supra* p. 18) defines "entitlement authority" to mean (at least for purposes of that Act) the authority described in section 401(c)(2)(C) of that Act (*see supra* p. 204). Section 250(c)(18) of Gramm-Rudman-Hollings (*see supra* p. 378) provides that all references to entitlement authority shall include the mandatory appropriations accounts listed *supra* note 1162.

[1111] For the list, see *infra* note 1162.

[1112] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1113] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1114] Section 250(c)(4) defines "category." *See supra* p. 373.

fourth year.

(B) For the domestic category,[1115] 53 percent for the first year, 31 percent for the second year, 12 percent for the third year, and 2 percent for the fourth year.

(21)[1116] The sale of an asset means the sale to the public of any asset, whether physical or financial, owned in whole or in part by the United States. The term "prepayment of a loan" means payments to the United States made in advance of the schedules set by law or contract when the financial asset is first acquired, such as the prepayment to the Federal Financing Bank of loans guaranteed by the Rural Electrification Administration. If a law or contract allows a flexible payment schedule, the term "in advance" shall mean in advance of the slowest payment schedule allowed under such law or contract.[1117]

[1115] Section 250(c)(4) defines "category." *See supra* p. 373.

[1116] Section 13101(b) of the Budget Enforcement Act (*see infra* p. 617) transferred this definition without change from section 257(12) of Gramm-Rudman-Hollings as it existed immediately before enactment of the Budget Enforcement Act. This drafters of the Budget Enforcement Act used this circuitous route so as to assure certain Senators that the Act made no change in the treatment of asset sales; indeed, the Act does not use the term "asset sale."

[1117] Section 13101(a) of the Budget Enforcement Act added section 250(c). *See infra* p. 617.

The statement of managers accompanying the conference report on the Budget Enforcement Act briefly explains the changes made by this subsection:

X. DEFINITION

Current law

Section 257 of Gramm-Rudman-Hollings defined the terms "automatic spending increase," "budget outlays," "budget authority," "concurrent resolution on the budget," "deficit," "maximum defic[i]t amount," "real economic growth," "sequester," "sequestration," "account," "sequesterable resource," "margin," "prepayment of a loan," "outlay rate," and "combined outlay rate."

Specifically, section 257 defines "margin" to mean $10 billion for fiscal

(continued...)

[1117](...continued)
years 1988 through 1992 and zero for fiscal year 1993. If the deficit exceeds the Gramm-Rudman-Hollings targets by less then the margin through fiscal year 1992, a sequester order is not trigge[r]ed.

House bill

The House bill moves the definitions section to a new section 250 and retains or revises the definitions of "outlays," "budget authority," "maximum deficit amount," "real economic growth," "sequester," "sequestration," "account," and "prepayment of a loan." the House bill adds to the definitions section new definitions for "breach," ‘category," "baseline," "budgetary resources," "discretionary appropriations," "direct spending," "current," "sale of an asset," "budget year," "current year," "outyear," "OMB," and "CBO," but strikes definitions for "automatic spending increase," "concurrent resolution on the budget," "deficit," sequesterable resources," "outlay rate," and "combined outlay rate." Finally, the House bill redefines "margin" to mean $15 billion for fiscal year 1994 and 1995 (minus any authorized outlay adjustments).

Senate amendment

The Senate amendment redefines "margin" to mean zero for fiscal years 1991 through 1993 and $15 billion for fiscal years 1994 and 1995. Other than in the definition of "Margin," the Senate amendment makes no changes in the Gramm-Rudman-Hollings definitions.

Conference agreement

The conference agreement accepts the definition changes proposed by the House, except that no definition of "sale of an asset" is provided. Additionally "margin" is redefined to mean zero for fiscal years 1992 and 1993 and $15 billion for fiscal years 1994 1995.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,170-71 (1990).

Before enactment of the Budget Enforcement Act, section 257 of Gramm-Rudman-Hollings dealt with definitions and read as follows:

SEC. 257. DEFINITIONS

For purposes of this title:

(1) The term "automatic spending increase" (except as otherwise provided in sections 255 and 256) means increases in budget outlays due to changes in indexes in the following Federal programs:

National Wool Act (12-4336-0-3-351);

Special milk program (12-3502-0-1-605); and

Vocational rehabilitation (91-0301-0-1-506).

(continued...)

[1117](...continued)

For purposes of the preceding provisions of this paragraph, programs are identified by the designated budget account identification code numbers set forth in the Budget of the United States Government, 1986 -- Appendix.

(2) The terms "budget outlays" and "budget authority" have the meaning given to such terms in sections 3(1) and 3(2), respectively, of the Congressional Budget and Impoundment Control Act of 1974.

(3) The term "concurrent resolution on the budget" has the meaning given to such term in section 3(4) of the Congressional Budget and Impoundment Control Act of 1974.

(4) The term "deficit" has the meaning given to such term in section 3(6) of the Congressional Budget and Impoundment Control Act of 1974.

(5) The term "maximum deficit amount", with respect to any fiscal year, means the maximum deficit amount for such fiscal year determined under section 3(7) of the Congressional Budget and Impoundment Control Act of 1974.

(6) The term "real economic growth", with respect to any fiscal year, means the growth in the gross national product during such fiscal year, adjusted for inflation, consistent with Department of Commerce definitions.

(7) The terms "sequester" and "sequestration" (subject to section 252(a)(4)) refer to or mean the cancellation of new budget authority, unobligated balances, obligated balances, new loan guarantee commitments, new direct loan obligations, and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, and obligation limitations.

(8) The term "account" means an item for which appropriations are made in any appropriation Act used to determine the budget base, and, for items not provided for in appropriation Acts, such term means an item for which there is a designated budget account identification code number in the Appendix to the President's budget.

(9) The term "sequesterable resource" means new budget authority; unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974; and obligation limitations for budget accounts, programs, projects, and activities that are not exempt from reduction or sequestration under this part.

(continued...)

[1117](...continued)

(10) The term "margin" means $10,000,000,000 with respect to each of fiscal years 1988 through 1992 and zero with respect to fiscal year 1993.

(11) As used in this part, all references to section 401(c)(2) of the Congressional Budget Act of 1974 shall include (but are not limited to) payments to any person or government under terms of law for the following programs:

(A) Claims, defense (97-0102-0-1-051).

(B) Veterans compensation (36-0153-0-1-701).

(C) Veterans pensions (36-0154-0-1-701).

(D) Burial benefits and miscellaneous assistance (36-0155-0-1-701).

(E) Readjustment benefits (36-0137-0-1-702).

(F) Loan guaranty revolving fund (36-4025-0-3-704).

(G) Guaranteed student loans (91-0230-0-1-502).

(H) Social services block grant (75-1634-0-1-506).

(I) Family social services (75-1645-0-1-506).

(J) Rehabilitation services and handicapped research (91-0301-0-1-506).

(K) Grants to States for medicaid (75-0512-0-1-551).

(L) Special benefits for disabled coal miners (75-0409-0-1-601).

(M) Black lung disability trust fund (20-8144-0-7-601).

(N) Special benefits (16-1521-0-1-602).

(O) Federal unemployment benefits and allowances (16-0326-0-1-603).

(P) Supplemental security income program (75-0406-0-1-609).

(Q) Family support payments to States (75-1501-0-

(continued...)

[1117] (...continued)

1-609).

(R) Food stamp program (12-3505-0-1-605).

(S) Child nutrition programs (12-3539-0-1-605).

(T) Retired pay, coast guard (69-0241-0-1-403).

(U) Government payment for annuitants, employees health benefits (24-0206-0-1-551).

(12) The sale of an asset means the sale to the public of any asset, whether physical or financial, owned in whole or in part by the United States. The term "prepayment of a loan" means payments to the United States made in advance of the schedules set by law or contract when the financial asset is first acquired, such as the prepayment to the Federal Financing Bank of loans guaranteed by the Rural Electrification Administration. If a law or contract allows a flexible payment schedule, the term "in advance" shall mean in advance of the slowest payment schedule allowed under such law or contract.

(13) The term "outlay rate", with respect to any budget account, program, project, or activity, means --

(A) the ratio of outlays resulting in the fiscal year involved from new budgetary resources for such budget account, program, project, or activity to such new budgetary resources; or

(B) the ratio of outlays resulting in the fiscal year involved from unobligated balances for such budget account, program, project, or activity to such unobligated balances.

(14) The term "combined outlay rate", with respect to any budget account, program, project, or activity, means the weighted average (by budgetary resources) of the ratios determined under subparagraphs (A) and (B) of paragraph (13) for such budget account, program, project, or activity.

DISCRETIONARY APPROPRIATIONS CATEGORIES[1118]

The following is a list of discretionary accounts organized by three subsets of discretionary appropriations: defense, international, and domestic discretionary, pursuant to Section 250(c)[(]4[)](A). New accounts or activities shall be categorized in consultation with the Committees on Appropriations and Budget of the House of Representatives and the Senate.

APPROPRIATED DEFENSE DISCRETIONARY ACCOUNTS FOR FISCAL 1991

COMMERCE, JUSTICE, STATE

Department of Transportation, Maritime Administration, Ready reserve force
69-1710-0-1-054

DEFENSE

Department of Defense, Procurement, Coastal defense augmentation
17-0380-0-1-051
Military personnel, Marine Corps
17-1105-0-1-051
Operation and Maintenance, Marine Corps
17-1106-0-1-051
Operation and Maintenance, Marine Corps Reserve
17-1107-0-1-051
Reserve personnel, Marine Corps
17-1108-0-1-051
Procurement, Marine Corps
17-1109-0-1-051
Research, development, test, and evaluation, Navy
17-1319-0-1-051
Reserve personnel, Navy
17-1405-0-1-051
Military personnel, Navy
17-1453-0-1-051
Aircraft procurement, Navy
17-1506-0-1-051
Weapons procurement, Navy
17-1507-0-1-051
Shipbuilding and conversion, Navy
17-1611-0-1-051
Operation and Maintenance, Navy
17-1804-0-1-051
Operation and Maintenance, Navy Reserve
17-1806-0-1-051
Other procurement, Navy
17-1810-0-1-051
Navy Stock Fund
17-4911-0-4-051
Navy Industrial Fund
17-4912-0-4-051
Marine Corps Industrial Fund
17-4914-0-4-051
Operation and Maintenance, National Board for the Promotion of Rifle Practice, Army
21-1705-0-1-051
Military Personnel, Army
21-2010-0-1-051
Operation and Maintenance, Army
21-2020-0-1-051
Aircraft procurement, Army
21-2031-0-1-051
Missile procurement, Army
21-2032-0-1-051
Procurement of weapons and tracked combat vehicles, Army
21-2033-0-1-051
Procurement of ammunition, Army
21-2034-0-1-051
Other procurement, Army
21-2035-0-1-051
Research, Development, test, and evaluation, Army
21-2040-0-1-051
Military Personnel, National Guard personnel, Army
21-2060-0-1-051
Operation and Maintenance, Army National Guard
21-2065-0-1-051
Reserve personnel, Army
21-2070-0-1-051
Operation and Maintenance, Army Reserve
21-2080-0-1-051
Revolving and management funds, Army stock fund
21-4991-0-4-051
Army Industrial Fund
21-4992-0-4-051
Aircraft procurement, Air Force
57-3010-0-1-051
Missile procurement, Air Force
57-3020-0-1-051
Other procurement, Air Force
57-3080-0-1-051
Operation and Maintenance, Air Force
57-3400-0-1-051
Military personnel, Air Force
57-3500-0-1-051
Research, development, test, and evaluation, Air Force
57-3600-0-1-051
Reserve personnel, Air Force
57-3700-0-1-051
Operation and Maintenance, Air Force Reserve

[1118] This list of "DISCRETIONARY APPROPRIATIONS CATEGORIES" on pp. 384-401 appears in the joint statement of managers accompanying the conference report on the Budget Enforcement Act. *See* H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,180-218 (1990).

57-3740-0-1-051
Operation and Maintenance, Air National Guard
57-3840-0-1-051
National Guard personnel, Air Force
57-3850-0-1-051
Air Force stock fund
57-4921-0-4-051
Air Force Industrial Fund
57-4922-0-4-051
Operation and Maintenance, Defense agencies
97-0100-0-1-051
Court of Military Appeals, Defense
97-0104-0-1-051
Drug interdiction and counter-drug activities, Defense
97-0105-0-1-051
Goodwill Games
97-0106-0-1-051
Office of the Inspector General
97-0107-0-1-051
Procurement, Defense agencies
97-0300-0-1-051
National guard and reserve equipment
97-0350-0-1-051
Defense production act purchases
97-0360-0-1-051
Chemical agents and munitions destruction, Defense
97-0390-0-1-051
Research, development, test, and evaluation, Defense agencies
97-0400-0-1-051
Developmental test and evaluation, Defense
97-0450-0-1-051
Operational test and evaluation, Defense
97-0460-0-1-051
Environmental Restoration, Defense
97-0810-0-1-051
Humanitarian assistance
97-0819-0-1-051
Defense Stock Fund
97-4961-0-4-051
Defense Industrial Fund
97-4962-0-4-051
Emergency Response fund
97-4965-0-4-051
Central Intelligence Agency, Enhanced security countermeasures capabilities
56-3401-0-1-054
Intelligence community staff
95-0400-0-1-054

ENERGY AND WATER

Department of Energy, Atomic energy defense activities
89-0220-0-1-053
Defense Nuclear Facilities Safety Board, S&E
95-3900-0-1-053

MILITARY CONSTRUCTION

Department of Defense, Family Housing, Navy and Marine Corps
17-0703-0-1-051
Military construction, Navy
17-1205-0-1-051
Military construction, Naval Reserve
17-1235-0-1-051
Family Housing, Army
21-0702-0-1-051
Military construction, Army
21-2050-0-1-051
Military construction, Army National Guard
21-2085-0-1-051
Military construction, Army Reserve
21-2086-0-1-051
Family housing, Air Force
57-0704-0-1-051
Military construction, Air Force
57-3300-0-1-051
Military construction, Air Force Reserve
57-3730-0-1-051
Military construction, Air National Guard
57-3830-0-1-051
Base realignment and closure account
97-0103-0-1-051
Military construction, defense agencies
97-0500-0-1-051
Family Housing, Defense agencies
97-0706-01-051
North Atlantic Treaty Organization infrastructure
97-0804-0-1-051
Family housing, Homeowners assistance fund, Defense[1]
97-4090-0-3-051

VETERANS', HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES

Federal Emergency Management Agency, S&E (Defense-related activities)
58-0100-0-1-054
Emergency management planning and assistance (defense-related)
58-0101-0-1-054
Selective Service System, S&E
90-0400-0-1-054

[Note for the list "APPROPRIATED DEFENSE DISCRETIONARY ACCOUNTS FOR FISCAL 1991" that appears at pp. 384-385:]

[1] Portion of account is non-appropriated mandatory.

APPROPRIATED INTERNATIONAL DISCRETIONARY ACCOUNTS FOR FISCAL YEAR 1991

COMMERCE, JUSTICE, STATE

Foreign Claims Settlement Commission, S&E
15-0100-0-1-153

Payment of Vietnam and U.S.S. *Pueblo* prisoner of war claims
15-0104-0-1-153

Department of State, Administration of Foreign Affairs, S&E
19-0113-0-1-153

Soviet-East European research and training
19-0118-0-1-153

Administration of Foreign Affairs, Protection of foreign missions and officials
19-0520-0-1-153

Emergencies in the diplomatic and consular service
19-0522-0-1-153

Payment to the American Institute in Taiwan
19-0523-0-1-153

Office of the Inspector General
19-0529-0-1-153

Acquisition and maintenance of buildings abroad
19-0535-0-1-153

Acquisition and maintenance of buildings abroad (special foreign currency)
19-0538-0-1-153

Representation Allowances
19-0545-0-1-153

International Organizations and Conferences, contributions for international peacekeeping activities
19-1124-0-1-153

International conferences and contingencies
19-1125-0-1-153

Contributions to international organizations
19-1126-0-1-153

U.S. bilateral science and technology agreements
19-1151-0-1-153

International Trade Commission, S&E
34-0100-0-1-153

Commission on the Ukraine Famine, S&E
48-0050-0-1-153

Commission for the Study of Intl. Migration and Coop., S&E
48-1400-0-1-153

Arms Control and Disarmament Agency, activities
94-0100-0-1-153

Commission for the Preservation of America's Heritage Abroad, S&E
95-3700-0-1-153

Department of State, Payment to the Asia Foundation
19-0525-0-1-154

United States Information Agency, S&E
67-0201-0-1-154

East West Center
67-0202-0-1-154

Radio construction
67-0204-0-1-154

Radio broadcasting to Cuba
67-0208-0-1-154

Educational and cultural exchange programs
67-0209-0-1-154

National Endowment for Democracy
67-0210-0-1-154

Office of the Inspector General
67-0300-0-1-154

Board for International Broadcasting, Grants and expenses
95-1145-0-1-154

Israel relay station
95-1146-0-1-154

Japan-United States Friendship Commission trust fund
95-8025-0-[7]-154

FOREIGN OPERATIONS

Department of State, U.S. emergency refugee and migration assistance
11-0040-0-1-151

Multilateral assistance, Contribution to the Inter-American Dvlt. Bank
11-0072-0-1-151

Contribution to the International Development Association
11-0073-0-1-151

Contribution to the Asian Development Bank
11-0076-0-1-151

Contribution to the Intl. Bank for Reconstruction
11-0077-0-1-151

Contribution to the International Finance Corporation
11-0078-0-1-151

Contribution to the African Development Fund
11-0079-0-1-151

Contribution to the African Development Bank
11-0082-0-1-151

Peace Corps
11-0100-0-1-151

African Development Foundation
11-0700-0-1-151

Agency for Intl. Development, Operating expenses
11-1000-0-1-151

Trade and Development Program
11-1001-0-1-151

Multilateral assistance, Intl. organizations and programs
11-1005-0-1-151

AID, operating expenses
11-1007-0-1-151

Sahel development program
11-1012-0-1-151

American schools and hospitals abroad
11-1013-0-1-151

Sub-Saharan Africa development assistance
11-1014-0-1-151

Functional development assistance program

11-1021-0-1-151

Department of State, International narcotics control

11-1022-0-1-151

AID, International disaster assistance

11-1035-0-1-151

Special assistance initiatives

11-1042-0-1-151

Inter-American Foundation

11-4031-0-3-151

Department of State, migration and refugee assistance

19-1143-0-1-151

Overseas Private Investment Corporation

71-4030-0-3-151

AID, Private sector revolving fund

72-4341-0-3-151

International security assistance, peacekeeping operations

11-1032-0-1-152

Economic support fund

11-1037-0-1-152

Special assistance for Central America, reconciliation assistance

11-1038-0-1-152

International Security Assistance, Military assistance

11-1080-0-1-152

International military education and training

11-1081-0-1-152

Foreign military financing

11-1082-0-1-152

Department of State, FMS interest buy-down

11-8882-0-1-152

Anti-terrorism assistance

19-0114-0-1-152

Intl. Monetary Programs, Contribution to enhanced structural adjustments facility

11-0005-0-1-155

Military sales programs, special defense acquisition fund

11-4116-0-3-155

Export-Import Bank of the United States

83-4027-0-3-155

LABOR, HHS

United States Institute of Peace, operating expenses

95-1300-0-1-153

AGRICULTURE, RURAL DEVELOPMENT AND RELATED AGENCIES

Foreign assistance programs, Expenses, Public Law 480

12-2274-0-1-151

APPROPRIATED DOMESTIC DISCRETIONARY—ACCOUNTS FOR FISCAL YEAR 1991

COMMERCE, JUSTICE, STATE

Department of State, International Commissions, S&E, IBWC

19-1069-0-1-301

Construction, IBWC

19-1078-0-1-301

American section, international commissions

19-1082-0-1-301

Conservation and land management, Intl. fisheries commissions

19-1087-0-1-302

Marine Mammal Commission, S&E

95-2200-0-1-302

National Oceanic and Atmospheric Administration, operations, research and facilities

13-1450-0-1-306

Aviation weather services program

13-8105-0-7-306

NOAA, Damage assessment and restoration revolving fund[1]

Commission on Agricultural Workers, S&E

48-0057-0-1-352

Department of Commerce, General Administration, S&E

13-0120-0-1-376

Minority Business Development Agency

13-0201-0-1-376

Export Administration, Operations and administration

13-0300-0-1-376

Bureau of the Census, S&E

13-0401-0-1-376

Periodic censuses and programs

13-0450-0-1-376

National Institute of Standards and Technology, scientific and technical research

13-0500-0-1-376

National Telecommunications and Information Administration, S&E

13-0550-0-1-376

United States Travel and Tourism Administration, S&E

13-0700-0-1-376

Patent and Trademark Office, S&E

13-1006-0-1-376

Technology Administration, S&E

13-1100-0-1-376

International Trade Administration, operations and administration

13-1250-0-1-376

Economic and Statistical Analysis, S&E

13-1500-0-1-376

NIST, working capital fund

13-4650-0-4-376

NOAA, Fishing vessel and gear damage compensation fund

13-5119-0-2-376

Fishermen's contingency fund

13-5120-0-2-376

Foreign fishing observer fund

13-5122-0-2-376

Fisheries promotional fund

13-5124-0-2-376

Promote and develop fishery products and research pertaining[2]
13-5139-0-2-376

Economic Development Administration, miscellaneous appropriations
13-9911-0-1-376

Department of State, fishermen's protective fund
19-5116-0-2-376

Federal Communications Commission, S&E
27-0100-0-1-376

Federal Trade Commission, S&E
29-0100-0-1-376

Securities and Exchange Commission, S&E
50-0100-0-1-376

Small Business Administration, S&E
73-0100-0-1-376

Office of the Inspector General
73-0200-0-1-376

Pollution control equipment contract guarantee revolving fund
73-4147-0-3-376

Business loan and investment fund
73-4154-0-3-376

Direct Loans

Guaranteed Loans

Surety bond guarantees revolving fund
73-4156-0-3-376

Christopher Columbus Quincentennary Jubilee Commission, S&E
76-0800-0-1-376

Competitiveness Policy Council
95-3750-0-1-376

Advisory Commission on Conferences in Ocean Shipping, S&E
48-2500-0-1-403

Federal Maritime Commission, S&E
65-0100-0-1-403

Maritime Administration, Ship construction
69-1708-0-1-403

Operating Differential subsidies
69-1709-0-1-403

Operations and Training
69-1750-0-1-403

War risk insurance revolving fund
69-4302-0-3-403

Vessel operations revolving fund
69-4303-0-3-403

Economic Development Administration, Grants and loans administration
13-0125-0-1-452

Office of the Inspector General
13-0126-0-1-452

Economic Development assistance programs
13-2050-0-1-452

Guaranteed Loans

Regional development programs
13-2100-0-1-452

NOAA, coastal energy impact fund
13-4315-0-3-452

Economic development revolving fund
13-4406-0-3-452

Miscellaneous appropriations (area and regional dvlt.)
13-9911-0-1-452

Small Business Administration, disaster relief and insurance, disaster loan fund
73-4153-0-3-453

Direct Loans

Department of Commerce, NTIA, Public telecommunications facilities, planning and construction
13-0551-0-1-503

Department of Health and Human Services, vaccine improvement program trust fund
20-8175-0-7-551

Department of Justice, federal law enforcement activities, General Admin., S&E
15-0129-0-1-751

Department of Justice, working capital fund
15-4526-0-4-751

Federal Bureau of Investigation, S&E
15-0200-0-1-751

Interagency law enforcement, Organized crime drug enforcement
15-0323-0-1-751

General Administration, Office of the Inspector General
15-0328-0-1-751

Emergency Drug funding
15-0331-0-1-751

United States Parole Commission, S&E
15-1061-0-1-751

Drug Enforcement Administration, S&E
15-1100-0-1-751

Immigration and Naturalization Service, S&E
15-1217-0-1-751

Immigration Emergency Fund
15-1218-0-1-751

Equal Employment Opportunity Commission, S&E
45-0100-0-1-751

Commission on Civil Rights, S&E
95-1900-0-1-751

Supreme Court of the United States, S&E[3]
10-0100-0-1-752

Care of the building and the grounds
10-0103-0-1-752

United States Court of International Trade, S&E[3]
10-0400-0-1-752

United States Court of Appeals for the Federal Circuit, S&E[3]
10-0510-0-1-752

Courts of Appeals, District Courts, and other judicial services, S&E[2,3]
[10-0920-0-1-752]

Defender services
10-0923-0-1-752

Fees of jurors and commissioners
10-0925-0-1-752

Administrative Office of the United States Courts, S&E
10-0927-0-1-752

Federal judicial center, S&E
10-0928-0-1-752

Courts of Appeals, District Courts, and other judicial services, court security
10-0930-0-1-752

Furniture and furnishings
10-0932-0-1-752

United States Sentencing Commission, S&E
10-0938-0-1-752

Department of Justice, General Legal Activities, S&E
15-0128-0-1-752

Antitrust division, S&E
15-0319-0-1-752

United States Attorneys, S&E
15-0322-0-1-752

United States Marshals Service, S&E
15-0324-0-1-752

Community Relations Service, S&E
15-0500-0-1-752

Support of United States prisoners
15-1020-0-1-752

Assets forfeiture fund[2]
15-5042-0-2-752

United States trustees system fund
15-5073-0-2-752

Payment to the Legal Services Corporation
20-0501-0-1-752

State Justice Institute, S&E
48-0052-0-1-752

Federal Prison System, buildings and facilities
15-1003-0-1-753

Salaries and Expenses
15-1060-0-1-753

Federal Prison Industries, Incorporated[2]
15-4500-0-4-753

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15-1004-0-1-754

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97-0826-0-1-552

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20-1700-0-1-806

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89-0222-0-1-251

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48-0070-0-1-271

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89-0226-0-1-271

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89-0303-0-1-271

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46-0100-0-1-301

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46-0500-0-1-301

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46-0501-0-1-301

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96-3125-0-1-301

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96-3126-0-1-301

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96-3123-0-1-303

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46-0446-0-1-304

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46-0200-0-1-452

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89-0213-0-1-271

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89-0216-0-1-276

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14-1110-0-1-302

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14-1801-0-1-302

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14-1917-0-1-302

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14-2100-0-1-302

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14-4525-0-4-302

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14-1031-0-1-303

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14-1036-0-1-303

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14-1038-0-1-303

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14-1043-0-1-303

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14-5035-0-2-303

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14-0102-0-1-306

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14-0119-0-1-306

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14-0804-0-1-306

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14-0959-0-1-306

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42-0100-0-1-451

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42-0102-0-1-451

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42-4084-0-3-451

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92-2500-0-1-451

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95-2600-0-1-451

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14-2100-0-1-452

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14-2301-0-1-452

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14-2303-0-1-452

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14-2368-0-1-452

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14-4410-0-3-452

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14-2100-0-1-501

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91-0101-0-1-501

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33-0100-0-1-503

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33-0129-0-1-503

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33-0132-0-1-503

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33-0133-0-1-503

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33-0200-0-1-503

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33-0201-0-1-503

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33-0400-0-1-503

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33-0401-0-1-503

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59-0100-0-1-503

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59-0200-0-1-503

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59-0300-0-1-503

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95-2602-0-1-503

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75-0390-0-1-551

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75-0391-0-1-551

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75-0392-0-1-551

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14-0118-0-1-806

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48-1100-0-1-808

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76-0700-0-1-808

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95-3300-0-1-808

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91-0102-0-1-501

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91-0220-0-1-501

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91-0300-0-1-501

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91-0400-0-1-501

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91-0600-0-1-501

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91-0900-0-1-501

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95-0600-0-1-501

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48-0400-0-1-502

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91-0200-0-1-502

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91-0201-0-1-502

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91-0242-0-1-502

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91-0601-0-1-502

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91-0602-0-1-502

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91-0603-0-1-502

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20-0151-0-1-503

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91-0104-0-1-503

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91-0800-0-1-503

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91-1100-0-1-503

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95-2700-0-1-503

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20-8042-0-7-504

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75-1505-0-1-504

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75-1636-0-1-506

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95-3500-0-1-506

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75-0350-0-1-551

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75-0511-0-1-551

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75-0943-0-1-551

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75-1101-0-1-551

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75-1300-0-1-551

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75-1361-0-1-551

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75-0511-0-1-552

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75-0807-0-1-552

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75-0819-0-1-552

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75-0848-0-1-552

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75-0849-0-1-552

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75-0851-0-1-552

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75-0872-0-1-552

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75-0885-0-1-552

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75-0886-0-1-552

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75-0891-0-1-552

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75-0943-0-1-552

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75-1101-0-1-552

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75-0888-0-1-553

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20-8004-0-7-571

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20-8005-0-7-571

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60-0111-0-1-601

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60-8012-0-7-601

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75-0120-0-1-609

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20-8006-0-7-651

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75-0135-0-1-751

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91-0700-0-1-751

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12-0115-0-1-352
Departmental Administration, Rental payments and building operations and maintenance
12-0117-0-1-352
Advisory committees
12-0118-0-1-352
Departmental Administration
12-0120-0-1-352
Office of public affairs
12-0130-0-1-352
National Agricultural Library
12-0300-0-1-352
Extension Service
12-0502-0-1-352
Departmental Administration, Office of budget and program analysis
12-0503-0-1-352
Office of the Inspector General
12-0900-0-1-352
Agricultural Research Service
12-1400-0-1-352
Buildings and facilities
12-1401-0-1-352
Office on International Cooperation and Development, Scientific activities overseas (foreign currency program)
12-1404-0-1-352
Cooperative State Research Service[2]
12-1500-0-1-352
Animal and Plant Health Inspection Service, S&E
12-1600-0-1-352
Buildings and facilities
12-1601-0-1-352
Economic Research Service
12-1701-0-1-352
National Agricultural Statistics Service
12-1801-0-1-352
World Agricultural Outlook Board
12-2100-0-1-352
Office of the General Counsel
12-2300-0-1-352
Federal Grain Inspection Service, S&E
12-2400-0-1-352
Agricultural Marketing Services
12-2500-0-1-352
Payments to states and possessions
12-2501-0-1-352
Packers and Stockyards Administration
12-2600-0-1-352
Office of Transportation
12-2800-0-1-352
Foreign Agricultural Service
12-2900-0-1-352
Agricultural Cooperative Service
12-3000-0-1-352
Office of International Cooperation and Development
12-3200-0-1-352
Human Nutrition Information Service
12-3501-0-1-352
Departmental Administration, working capital fund
12-4609-0-4-352
Ameriflora Conference[1]
12-8880-0-1-352
Farmers Home Administration, Compensation for construction defects
12-2071-0-1-371
Rural housing insurance fund[2,3]
12-4141-0-3-371
Direct Loans
Guaranteed Loans
Commodity Futures Trading Commission
95-1400-0-1-376
Department of Agriculture, FHA, S&E
12-2001-0-1-452
Rural development grants
12-2065-0-1-452
Rural water and waste disposal grants
12-2066-0-1-452
Rural community fire protection grants
12-2067-0-1-452
REA, Purchase of rural telephone bank capital stock
12-3102-0-1-452
FHA, rural development insurance fund[2,3]
12-4155-0-3-452
Direct Loans
Guaranteed Loans
REA, rural telephone bank[2]
12-4231-0-3-452
Direct Loans
FHA, rural development loan fund
12-4233-0-3-452
Direct Loans
Pollution abatement grant[1]
Emergency community water assistance[1]
ASCS, Emergency conservation program
12-3316-0-1-453
Food Safety and Inspection Service, S&E
12-3700-0-1-554
Food and Drug Administration, Program expenses
75-0600-0-1-554
Buildings and Facilities
75-0603-0-1-554
Department of Agriculture, FHA, Rural housing voucher program
12-2002-0-1-604
Rural housing for domestic farm labor
12-2004-0-1-604
Mutual and self-help housing
12-2006-0-1-604
Very low income housing repair grants
12-2064-0-1-604
Rural housing preservation grants
12-2070-0-1-604
FNS, Food donations programs for

selected groups[3]
12-3503-0-1-605
Food program administration
12-3508-0-1-605
Special supplemental food program for women, infants, and children
12-3510-0-1-605
Commodity supplemental food program
12-3512-0-1-605

TRANSPORTATION SUBCOMMITTEE

Department of Transportation, Coast Guard, Offshore oil pollution compensation fund
69-5167-0-2-304
Environmental compliance and restoration
69-0320-01-304
Offshore and pollution compensation fund
69-5167-0-2-304
Deepwater port liability fund
69-5170-0-2-304
Interstate Commerce Commission, S&E
30-0100-0-1-401
Dept. of Transportation, Federal Railroad Administration, Northeast corridor improvement program
69-0123-0-1-401
Federal Highway Administration, Motor carrier safety
69-0552-0-1-401
Railroad-highway crossings demonstration projects
69-0557-0-1-401
National Highway Traffic Safety Administration, Operations and research
69-0650-0-1-401
Miscellaneous safety programs
69-0651-0-1-401
Federal Railroad Administration, Office of the Administrator
69-0700-0-1-401
Railroad safety
69-0702-0-1-401
Grants to National Railroad Passenger Corporation
69-0704-0-1-401
Amtrak corridor improvement loans
69-0720-0-1-401
Direct Loans
Railroad research and development
69-0745-0-1-401
Conrail commuter transition assistance
69-0747-0-1-401
Urban Mass Transportation Administration, Administrative expenses
69-1120-0-1-401
Research, training, and human resources
69-1121-0-1-401
Interstate transfer grants-transit
69-1127-0-1-401
Washington Metro
69-1128-0-1-401
Formula grants
69-1129-0-1-401
Federal Railroad Administration, Regional rail reorganization program
69-4100-0-3-401
Railroad rehabilitation and improvement financing funds[2]
69-4411-0-3-401
Federal Highway Administration, Trust fund share of other highway programs
69-8009-0-7-401
Baltimore-Washington Parkway
69-8014-0-7-401
National Highway Traffic Safety Admin., Operations and research (trust fund share)
69-8016-0-7-401
Federal Highway Administration, Highway safety research and development
69-8017-0-7-401
Highway-related safety grants[2]
69-8019-0-7-401
National Highway Traffic Safety Administration, Highway traffic safety grants[2]
69-8020-0-7-401
Federal Highway Administration, Motor carrier safety grants[2]
69-8048-0-7-401
University transportation centers
69-8065-0-7-401
Federal-aid highways[2]
69-8083-0-7-401
Urban Mass Transportation Administration, Discretionary grants[2]
69-8191-0-7-401
Federal Highway Administration, Right-of-way revolving fund (trust revolving fund)
69-8402-0-8-401
Trust fund
Direct Loans
Local rail service assistance[1]
Miscellaneous appropriations
69-9911-0-1-401
Urban Mass Transportation and Administration, Miscellaneous expired accounts
69-9913-0-1-401
Federal Highway Administration, Miscellaneous highway trust funds
69-9972-0-7-401
Air transportation, Office of the Secretary, Payments to air carriers, DoT
69-0150-0-1-402
Federal Aviation Administration, Operations
69-1301-0-1-402
Aviation insurance revolving fund
69-4120-0-3-402
Trust fund share of FAA operations
69-8104-0-7-402
Grants-in-aid for airports (Airport and airway trust fund)[2]
69-8106-0-7-402
Facilities and equipment (Airport and airway trust fund)
69-8107-0-7-402
Research, engineering and development (Airport and airway trust fund)
69-8108-0-7-402
Water transportation, Coast Guard, Operating expenses
69-0201-0-1-403
Acquisition, construction, and improvements
69-0240-0-1-403
Reserve training
69-0242-0-1-403

Research, development, test, and evaluation
69-0243-0-1-403

Alteration of bridges
69-0244-0-1-403

Coast Guard supply fund
69-4535-0-4-403

Coast Guard yard fund
69-4743-0-4-403

Saint Lawrence Seaway Development Corporation, Operations and maintenance
69-8003-0-7-403

Coast Guard, Boat Safety
69-8149-0-7-403

Panama Canal Commission, Panama Canal revolving fund
95-4061-0-3-403

Department of Transportation, Office of the Sec., S&E
69-0102-0-1-407

Research and Special Programs Administration, Research and Special programs
69-0104-0-1-407

Office of Commercial Space Transportation, Operations and Research
69-0108-0-1-407

Office of the Inspector General, S&E
69-0130-0-1-407

Office of the Secretary, Transportation, planning, research and development
69-0142-0-1-407

Commission on aviation security and terrorism
69-1850-0-1-407

Working capital fund
69-4520-0-4-407

Research and Special Programs Administration, Pipeline safety
69-5172-0-2-407

National Transportation Safety Board, S&E
95-0310-0-1-407

Architectural and Transportation Barriers Compliance Board, S&E
95-3200-0-1-751

Financial Management Service, St Lawrence Seaway toll rebate program
20-8865-0-7-808

TREASURY-POSTAL SERVICE

Payments to the Postal Service, Payment to the Postal Service fund
18-1001-0-1-372

Disaster relief and insurance, Funds Appropriated to the President, Unanticipated Needs, natural disasters
11-0033-0-1-453

Committee for Purchase from the Blind and other Severely Handicapped, S&E
95-2000-0-1-505

Health care services, Executive Office of the President, White House Conference for a Drug Free America, S&E
11-0212-0-1-551

Office of Personnel Management, Civil service retirement and disability fund[2]
24-8135-0-7-602

Department of the Treasury, Federal Law Enforcement Training Center, S&E
20-0104-0-1-751

Acquisitions, construction, improvements, and related expense
20-0105-0-1-751

United States Customs Service, S&E[2]
20-0602-0-1-751

U. S. Customs, Financial crimes enforcement[1]

Operation and maintenance, air interdiction program
20-0604-0-1-751

Bureau of Alcohol, Tobacco, and Firearms, S&E
20-1000-0-1-751

United States Secret Service, S&E
20-1408-0-1-751

Administrative Conference of the United States, S&E
95-1700-0-1-751

Federal litigative and judicial activities, U.S. Tax Court, S&E
23-0100-0-1-752

Executive direction and management, Funds Appropriated to the President, Unanticipated needs
11-0037-0-1-802

Executive Office of the President, Office of Administration, S&E
11-0038-0-1-802

Funds Appropriated to the President, Investment in Management Improvement
11-0061-0-1-802

Executive Office of the president, The White House Office, S&E
11-0110-0-1-802

National Critical Materials Council, S&E
11-0111-0-1-802

Office of Management and Budget, Office of Federal Procurement Policy, S&E
11-0201-0-1-802

Executive Residence at the White House, Operating expenses
11-0210-0-1-802

Official Residence of the Vice President, Operating expenses
11-0211-0-1-802

OMB, S&E
11-0300-0-1-802

Special Assistance to the President, S&E
11-1454-0-1-802

Office of National Drug Control Policy, S&E
11-1457-0-1-802

Council of Economic Advisers, S&E
11-1900-0-1-802

National Security Council, S&E
11-2000-0-1-802

Office of Policy Development, S&E
11-2200-0-1-802

Office of National Drug Control Policy, Special forfeiture fund
11-5001-0-2-802

General Services Administration, Allowances and office staff for former Presidents
47-0105-0-1-802

Department of the Treasury, Depart-

mental Offices, S&E
20-0101-0-1-803

Office of the Inspector General
20-0106-0-1-803

International affairs
20-0171-0-1-803

Bureau of the Public Debt, Administering the public debt
20-0560-0-1-803

Internal Revenue Service, Administration and management
20-0911-0-1-803

Processing tax returns and assistance
20-0912-0-1-803

Tax law enforcement
20-0913-0-1-803

IRS, information system
20-0919-0-1-803

United States Mint, S&E
20-1616-0-1-803

Financial Management Service, S&E
20-1801-0-1-803

Departmental Offices, Working capital fund
20-4501-0-4-803

Bureau of Engraving and Printing Fund
20-4502-0-4-803

United States Customs Service, Customs forfeiture fund
20-5693-0-2-803

United States Mint, Expansion and improvements
20-9911-0-1-803

General Services Administration, General Activities, Office of Inspector General
47-0108-0-1-804

General management and administration, salaries and expenses
47-0110-0-1-804

Personal Property Activities, Federal supply service
47-0116-0-1-804

Operating expenses, federal property resources service
47-0533-0-1-804

Real property relocation
47-0535-0-1-804

Operating expenses, information resources management service
47-0900-0-1-804

Real Property Activities, Federal buildings fund
47-4542-0-4-804

Information Resources Management Service, Information technology fund
47-4548-0-4-804

National Archives and Records Administration, operating expenses
88-0300-0-1-804

Central personnel management, OPM, S&E
24-0100-0-1-805

Office of the Inspector General
24-0400-0-1-805

Revolving fund
24-4571-0-4-805

Merit Systems Protection Board, S&E
41-0100-0-1-805

Federal Labor Relations Authority, S&E
54-0100-0-1-805

Office of Government Ethics, S&E
95-1100-0-1-805

Advisory Committee on Federal Pay, S&E
95-1800-0-1-805

Department of the Treasury, United States Customs Service, customs services at small airports
20-5694-0-2-808

Advisory Commission on Intergovernmental Relations, S&E
55-0100-0-1-808

Office of Special Counsel, S&E
62-0100-0-1-808

Federal Election Commission, S&E
95-1600-0-1-808

VETERAN'S, HOUSING AND URBAN DEVELOPMENT, AND INDEPENDENT AGENCIES

National Science Foundation, Research and related activities
49-0100-0-1-251

Scientific activities overseas (special foreign currency program)
49-0102-0-1-251

Science and engineering education activities
49-0106-0-1-251

Academic research facilities
49-0150-0-1-251

U.S. Antarctic program activities
49-0200-0-1-251

U.S. Antarctic logistical support activities
49-0202-0-1-251

Office of the Inspector General
49-0300-0-1-251

Space Flight, National Aeronautics and Space Administration, Research and program management (Space Flight)
80-0103-0-1-253

Space flight, control, and data communications (Space Flight)
80-0105-0-1-253

Construction of facilities (Space Flight)
80-0107-0-1-253

Research and development (Space Flight)
80-0108-0-1-253

Space, science, applications, and technology, Research and program management (Space science, applications)
80-0103-0-1-254

Construction of facilities (Space, science, applications)
80-0107-0-1-254

Research and development (Space, science, applications)
80-0108-0-1-254

Supporting space activities, Research and program management (Supporting space activities)
80-0103-0-1-255

Space flight, control, and data communications (supporting space activities)[2]
80-0105-0-1-255

Construction of facilities (Supporting

space activities)
80-0107-0-1-255
Research and development (Supporting space activities)
80-0108-0-1-255
Office of the Inspector General
80-0109-0-1-255
Environmental Protection Agency, Research and development (Energy supply)
68-0107-0-1-271
Pollution control and abatement, Hazardous substance superfund
20-8145-0-7-304
Leaking underground storage tank trust fund
20-8153-0-7-304
Operations, research, and facilities
68-0100-0-1-304
Construction grants
68-0103-0-1-304
Scientific activities overseas (Special foreign currency program)
68-0104-0-1-304
Research and development (Pollution control and abatement)
68-0107-0-1-304
Abatement, control, and compliance
68-0108-0-1-304
Direct loans
Buildings and facilities
68-0110-0-1-304
Office of the Inspector General
68-0112-0-1-304
Salaries and expenses
68-0200-0-1-304
Resolution Trust Corporation, OIG
22-1500-0-1-371
Mortgage credit and deposit insurance, National Credit Union Administration, Central liquidity facility
25-4470-0-3-371
Direct Loans
Department of Housing and Urban Development, FHA mutual mortgage and cooperative housing insurance funds[2,3]
86-4070-0-3-371
Direct Loans
Guaranteed Loans
FHA general and special risk insurance funds[2,3]
86-4072-0-3-371
Direct Loans
Guaranteed Loans
Housing for the elderly or handicapped fund
86-4115-0-3-371
Direct Loans
GNMA, Guarantees of mortgage-backed securities[2]
86-4238-0-3-371
Secondary Loan Guarantees
General Services Administration, General Activities, Consumer information center fund
47-4549-0-3-376
Payment to the National Institute of Building Sciences
95-3601-0-1-376
National Aeronautics and Space Administration (research and program management - Air transportation)
80-0103-0-1-402
Construction of facilities (air transportation)
80-0107-0-1-402
Research and development (air transportation)
80-0108-0-1-402
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Payment to the Neighborhood Reinvestment Corporation
82-1300-0-1-451
Department of Housing and Urban Development, Policy Development and Research, Research and technology
86-0108-0-1-451
Management and Administration, S&E
86-0143-0-1-451
Community development grants
86-0162-0-1-451
Guaranteed Loans
Subsidized Housing programs (community development)
86-0164-0-1-451
Urban Development action grants
86-0170-0-1-451
Urban homesteading
86-0171-0-1-451
Rental rehabilitation grants
86-0182-0-1-451
Rental housing assistance for the homeless
86-0187-0-1-451
Management and Administration, Office of the Inspector General
86-0189-0-1-451
Community Planning and Development, Rehabilitation loan fund
86-4036-0-3-451
Direct Loans
Urban Renewal Project Proceeds[1]
Federal Emergency Management Agency, S&E (disaster relief and insurance)
58-0100-0-1-453
Emergency management planning and assistance
58-0101-0-1-453
Disaster relief
58-0104-0-1-453
Office of the Inspector General
58-0300-0-1-453
Points of Light Foundation
11-0055-0-1-506
National Service Agency[1]
Department of Health and Human Services, Office of the Secretary, Office of Consumer Affairs
75-0137-0-1-506
Department of HUD, Housing counseling assistance
86-0156-0-1-506
Consumer Product Safety Commission, S&E
61-0100-0-1-554
Interagency Council on the Homeless
48-1300-0-1-604
Department of HUD, Management and Administration, S&E
86-0143-0-1-604

Public and Indian Housing Programs, payments for operation of low income housing projects
86-0163-0-1-604

Subsidized housing programs (housing assistance)
86-0164-0-1-604

Congregate services program
86-0178-0-1-604

Community Planning and Development, Emergency shelter grants program
86-0181-0-1-604

Transitional housing program
86-0188-0-1-604

Section 8 moderate rehabilitation, single room occupancy
86-0195-0-1-604

Home ownership and opportunity for people everywhere
86-0196-0-1-604

Drug elimination grants, low income housing
86-0197-0-1-604

Nonprofit sponsor assistance
86-4042-0-3-604
Direct Loans

Flexible subsidy fund
86-4044-0-3-604
Direct Loans

Nehemiah housing opportunity fund
86-4071-0-1-604
Direct Loans

Public Housing Commission
86-788[0]-0-1-604

Native American Housing Commission
86-788[8]-0-1-604

FEMA, emergency food and shelter program
58-0103-0-1-605

Department of Veterans Affairs, veterans job training
36-0103-0-1-702

Vocational rehabilitation revolving fund
36-4114-0-3-702

Education loan fund
36-4118-0-3-702

Construction, major projects
36-0110-0-1-703

Construction, minor projects
36-0111-0-1-703

Grants to the Republic of the Philippines
36-0144-0-1-703

Medical administration and miscellaneous operating expenses
36-0152-0-1-703

Medical care
36-0160-0-1-703

Medical and prosthetic research
36-0161-0-1-703

Grants for construction of state extended care facilities
36-0181-0-1-703

Nursing home revolving fund
36-4013-0-3-703

Parking garage revolving fund
36-4538-0-3-703

Veterans housing, direct loan revolving fund
36-4024-0-3-704
Direct Loans

Cemeterial expenses, Army, S&E
21-1805-0-1-705

Departmental Administration, General operating expenses
36-0151-0-1-705

Office of the Inspector General
36-0170-0-1-705

Grants for the construction of State veterans cemeteries
36-0183-0-1-705

American Battle Monuments Commission, S&E
74-0100-0-1-705

Court of Veterans Appeals, S&E
95-0300-0-1-705

Department of HUD, Management and Administration, S&E
86-0143-0-1-751

Fair Housing activities
86-0144-0-1-751

Executive Office of the President, National Space Council, S&E
11-0020-0-1-802

Council on Environmental Quality and Office of Environmental
11-1453-0-1-802

Office of Science and Space Technology Policy, S&E
11-2600-0-1-802

Department of the Treasury, Office of Revenue Sharing, S&E
20-0107-0-1-806

[Notes for the list "APPROPRIATED DOMESTIC DISCRETIONARY ACCOUNTS FOR FISCAL YEAR 1991" that appears at pp. 387-401:]

[1] Treasury identification number not yet assigned.

[2] Portion of account is non-appropriated permanent.

[3] Portion of account is mandatory.

This list of "DISCRETIONARY APPROPRIATIONS CATEGORIES" on pp. 384-401 appears in the joint statement of managers accompanying the conference report on the Budget Enforcement Act. *See* H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,180-218 (1990).

SEC. 251. ENFORCING DISCRETIONARY SPENDING LIMITS.[1119]

(a) FISCAL YEARS 1991-1995 ENFORCEMENT. --

(1) SEQUESTRATION.[1120] -- Within 15 calendar days after Congress adjourns[1121] to end a session and on the same day as a sequestration (if any) under section 252 and section 253, there shall be a sequestration to eliminate a budget-year breach,[1122] if any, within any category.[1123]

(2) ELIMINATING A BREACH.[1124] -- Each non-exempt account[1125] within a category[1126] shall be reduced by a dollar amount calculated by multiplying the baseline[1127] level of

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[1119] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See infra* pp. 403-429, 457-473.

Section 13101(a) of the Budget Enforcement Act amended section 251 to read as it does now. *See infra* p. 617. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act explaining section 251, see *infra* note 1211 (at the end of this section).

[1120] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1121] What happens if the Congress recesses to end the first session of a Congress? Congress plainly intended to require annual review of legislation. This language should be read as "adjourns or recesses to end a session."

[1122] Section 250(c)(3) defines "breach." *See supra* p. 373.

[1123] Section 250(c)(4) defines "category." *See supra* p. 373.

[1124] Section 250(c)(3) defines "breach." *See supra* p. 373.

[1125] Section 250(c)(11) defines "account." *See supra* p. 377.

[1126] Section 250(c)(4) defines "category." *See supra* p. 373.

[1127] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

sequestrable budgetary resources[1128] in that account at that time by the uniform percentage necessary to eliminate a breach within that category; except that the health programs set forth in section 256(e) shall not be reduced by more than 2 percent and the uniform percent applicable to all other programs under this paragraph shall be increased (if necessary) to a level sufficient to eliminate that breach. If, within a category, the discretionary spending limits[1129] for both new budget authority[1130] and outlays[1131] are breached, the uniform percentage shall be calculated by --

(A) first, calculating the uniform percentage necessary to eliminate the breach[1132] in new budget authority,[1133] and

(B) second, if any breach[1134] in outlays[1135] remains, increasing the uniform percentage to a level sufficient to eliminate that breach.

(3) MILITARY PERSONNEL. -- If the President uses the

[1128] Section 250(c)(6) defines "budgetary resources." *See supra* p. 375.

[1129] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1130] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1131] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1132] Section 250(c)(3) defines "breach." *See supra* p. 373.

[1133] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1134] Section 250(c)(3) defines "breach." *See supra* p. 373.

[1135] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

authority to exempt any military personnel from sequestration[1136] under section 255(h),[1137] each account[1138] within subfunctional category 051 (other than those military personnel accounts for which the authority provided under section 255(h)[1139] has been exercised) shall be further reduced by a dollar amount calculated by multiplying the enacted level of non-exempt budgetary resources[1140] in that account at that time by the uniform percentage necessary to offset the total dollar amount by which outlays[1141] are not reduced in military personnel accounts by reason of the use of such authority.

(4) PART-YEAR APPROPRIATIONS. -- If, on the date specified in paragraph (1), there is in effect an Act making or continuing appropriations for part of a fiscal year for

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[1136] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1137] *See infra* p. 506. This reference refers to the section 255(h) at the end of section 255, dealing with "OPTIONAL EXEMPTION OF MILITARY PERSONNEL," not the section 255(h) that preexisted the Budget Enforcement Act, dealing with "LOW-INCOME PROGRAMS." *See infra* p. 506. Section 13101(c)(4) of the Budget Enforcement Act added the subsection (h) dealing with "OPTIONAL EXEMPTION OF MILITARY PERSONNEL" "at the end" of section 255. *See infra* p. 618. As section 13101(c)(4) of the Budget Enforcement Act simply added the new subsection (h) at the end of section 255 and did not amend the existing subsection (h) to read as the new subsection (h), Congress evidently wanted to add another subsection and not to repeal the existing subsection (h). As subsections (h) and (i) already existed, however, the Budget Enforcement Act should have added a new subsection (j) at the end of section 255, or perhaps have inserted the new subsection (h) in place of the existing subsection (f), which at least some drafters of the Budget Enforcement Act intended to repeal. The reference here then should have been to subsection (j) or subsection (f), as the case may have been.

[1138] Section 250(c)(11) defines "account." *See supra* p. 377.

[1139] *See infra* p. 506. This reference refers to the section 255(h) at the end of section 255, dealing with "OPTIONAL EXEMPTION OF MILITARY PERSONNEL," not the section 255(h) that preexisted the Budget Enforcement Act, dealing with "LOW-INCOME PROGRAMS." *See infra* p. 506. See the discussion *supra* note 1137.

[1140] Section 250(c)(6) defines "budgetary resources." *See supra* p. 375.

[1141] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

any budget account,[1142] then the dollar sequestration[1143] calculated for that account under paragraphs (2) and (3) shall be subtracted from --

(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

(B) when a full-year appropriation for that account is enacted, from the amount otherwise provided by the full-year appropriation.

(5) LOOK-BACK. -- If, after June 30, an appropriation for the fiscal year in progress is enacted that causes a breach[1144] within a category[1145] for that year (after taking into account any sequestration[1146] of amounts within that category), the discretionary spending limits[1147] for that category for the next fiscal year shall be reduced by the amount or amounts of that breach.

(6) WITHIN-SESSION SEQUESTRATION.[1148] -- If an appropriation for a fiscal year in progress is enacted (after Con-

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[1142] Section 250(c)(11) defines "account." *See supra* p. 377.

[1143] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1144] Section 250(c)(3) defines "breach." *See supra* p. 373.

[1145] Section 250(c)(4) defines "category." *See supra* p. 373.

[1146] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1147] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1148] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

gress adjourns[1149] to end the session for that budget year[1150] and before July 1 of that fiscal year) that causes a breach[1151] within a category[1152] for that year (after taking into account any prior sequestration of amounts within that category), 15 days later there shall be a sequestration to eliminate that breach within that category following the procedures set forth in paragraphs (2) through (4).

(7) OMB[1153] ESTIMATES. -- As soon as practicable after Congress completes action on any discretionary appropriation,[1154] CBO,[1155] after consultation with the Committees on the Budget of the House of Representatives and the Senate, shall provide OMB with an estimate of the amount of discretionary new budget authority[1156] and outlays[1157] for the current year[1158] (if any) and the budget year[1159] provided by that legislation. Within 5 calendar days after the enact-

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[1149] What happens if the Congress recesses to end the first session of a Congress? Congress plainly intended to require annual review of legislation. (For example, the language later in this sentence refers to "that budget year.") This language should be read as "adjourns or recesses to end a session."

[1150] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1151] Section 250(c)(3) defines "breach." *See supra* p. 373.

[1152] Section 250(c)(4) defines "category." *See supra* p. 373.

[1153] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1154] Section 250(c)(7) defines "discretionary appropriations." *See supra* p. 375.

[1155] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1156] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1157] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1158] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1159] Section 250(c)(12) defines "budget year." *See supra* p. 377.

ment of any discretionary appropriation, OMB shall transmit a report to the House of Representatives and to the Senate containing the CBO estimate of that legislation, an OMB estimate of the amount of discretionary new budget authority and outlays for the current year (if any) and the budget year provided by that legislation, and an explanation of any difference between the two estimates. For purposes of this paragraph, amounts provided by annual appropriations shall include any new budget authority and outlays for those years in accounts[1160] for which funding is provided in that legislation that result from previously enacted legislation. Those OMB estimates shall be made using current[1161] economic and technical assumptions. OMB shall use the OMB estimates transmitted to the Congress under this paragraph for the purposes of this subsection. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the House and Senate Committees on the Budget, CBO, and OMB.[1162]

[1160] Section 250(c)(11) defines "account." *See supra* p. 377.

[1161] Section 250(c)(9) defines "current." *See supra* p. 376.

[1162] The statement of managers accompanying the conference report on the Budget Enforcement Act expressed concern regarding the powers conferred by this paragraph and set forth the scorekeeping guidelines to which this paragraph refers:

> XII. SCOREKEEPING
>
> The conferees recognize that, because of the constraints imposed by the Supreme Court's decision in *Bowsher v. Synar,* the conference agreement vests substantial power to estimate the costs of legislation with the Office of Management and Budget. The conferees are concerned that the Office of management and Budget has not always shown complete objectivity in its estimates. The conferees urge the Congress to scrutinize the scorekeeping of the Office of Management and Budget as that Office implements the procedures under this conference agreement. The conferees considered procedures under which Congress would enact into law Congressional Budget Office cost estimates as part of any spending legislation. Should the Office of Management and Budget abuse its scorekeeping power, the conferees believe that the Congress should adopt such procedures at that time.

(continued...)

[1162](...continued)

Section 251(a)(7) and 252(d) of Gramm-Rudman-Hollings as amended by this conference agreement provide that the Office of Management and Budget must make its estimates in conformance with scorekeeping guidelines determined for consultation among the Senate and House Committees on the Budget, the Congressional Budget Office, and the Office of Management and Budget. These provisions carry on and codify the existing consultative process that has led to these parties developing the following scorekeeping guidelines:

SCOREKEEPING GUIDELINES FOR FY 1991

The guideline listed below–reflect general budget scorekeeping conventions that will be used by the House and Senate Budget Committees and the Office of Management and Budget in measuring compliance with Congressional budget targets and the Budget Summit Agreement.

To the extent possible under the Budget Enforcement Act of 1990, the Gramm-Rudman-Hollings statute, the Congressional Budget Office and the Office of Management and Budget will follow these guidelines in calculating deficit estimates and making projections for Gramm-Rudman-Hollings and the Budget Enforcement Act 1990.

For both budget scorekeeping and Gramm-Rudman-Hollings, final scoring will necessarily depend on the review of legislation by the scorekeepers, as provided in the Budget Enforcement Act of 1990, the Congressional Budget Act and Gramm-Rudman-Hollings. These rules will be reviewed on an annual basis.

1. Mandatory spending

The list of accounts that are considered mandatory for purposes of scoring appropriations bills follows.

2. Outlays prior

Outlays from prior-year appropriations will be classified consistent with the discretionary/mandatory classification of the account from which the outlays occur.

3. Direct spending programs

Entitlements and other mandatory programs (including offsetting receipts) will be scored at current law levels, unless congressional action modifies the authorizing legislation. Substantive changes to or restrictions on entitlement law or other mandatory spending law in appropriations bills will be scored against the Appropriations Committee section 302(b) allocations in the House and the Senate except for those savings provisions that are to be enacted by an authorizing committee pursuant to the Budget Summit Agreement.

(continued...)

[1162](...continued)

4. Transfer of budget authority from a mandatory account to a discretionary account

The transfer of budget authority to a discretionary account will be scored as an increase in discretionary budget authority and outlays in the gaining account. The losing account will not show an offsetting reduction if the account is an entitlement or mandatory.

5. Permissive transfer authority

Permissive transfers will be assumed to occur (in full or in part) unless sufficient evidence exists to the contrary. Outlays from such transfers will be estimated based on the best information available, primarily historical experience and, where applicable, indications of Executive or Congressional intent.

This guideline will apply to specific transfers (transfers where the gaining and losing accounts and the amounts subject to transfer can be ascertained) for FY 1991 and to both specific and general transfer authority thereafter.

6. Reappropriations

Reappropriations of expiring balances of budget authority will be scored as new budget authority in the fiscal year in which the balances become newly available.

7. Advance appropriations

Advance appropriations of budget authority will be scored as new budget authority in the fiscal year in which the funds become newly available for obligation, not when the appropriations are enacted.

Advance appropriations will be classified as mandatory or discretionary consistent with the mandatory list below.

8. Rescissions and transfers of unobligated balances

Rescissions of unobligated balances will be scored as reductions in current budget authority and outlays in the year the money is rescinded.

Transfers of unobligated balances will be scored as reductions in current budget authority and outlays in the amount from which the funds are being transferred, and as increases in budget authority and outlays in the account to which these funds are being transferred.

In certain instances, these transactions will result in a net negative budget authority amounts in the source accounts. Such amounts of budget authority will be projected at zero. Outlay estimates for both the transferring

(continued...)

[1162](...continued)
and receiving accounts will be based on the spending patterns appropriate to the respective accounts.

9. Delay of obligations

Appropriations bills specify a date when funds will become available for obligation. It is this date that determines the year for which new budget authority is scored. In the absence of such a date, the bill is assumed to be effective upon enactment.

If a new appropriation provides that a portion of the budget authority shall not be available for obligation until a future fiscal year, that portion shall be treated as an advance appropriation of budget authority. If a law defers existing budget authority (or unobligated balances) from a year in which it was available for obligation to a year in which it was not available for obligation, that law shall be scored as a rescission in the current year and a reappropriation in the year in which obligational authority is extended. If the authority to obligate is contingent upon the enactment of a subsequent appropriation, new budget authority and outlays will be scored with the subsequent appropriation. If an appropriation is contingent on enactment of a subsequent authorization, new budget authority and outlays will be scored with the appropriation. If an appropriation is contingent on the fulfillment of some action by the Executive branch or some other event normally estimated, new budget authority will be scored with the appropriation and outlays will be estimated based on the best information about when (or if) the contingency will be met. Non-lawmaking contingencies within the control of the Congress are not scoreable events.

10. Absorption

Appropriations bills or reports should contain language that clearly specifies the extent to which funds for pay raises are either provided or absorbed within the levels appropriated in the bill, or remain to be provided.

11. Scoring purchases, lease-purchases and leases

General Rule. -- When a bill provides the authority for an agency to enter into a contract for the purchase, lease-purchase, or lease of a capital asset, budget authority will be scored in the year in which the budget authority is first made available in the amount of the government's total estimated legal obligations.

Outlays for a purchase or for a lease-purchase in which the Federal government assumes substantial risk -- for example, through an explicit government guarantee of third-party financing -- will be spread across the period during which the contractor constructs, manufactures, or purchases the asset. Outlays for a lease, or for a lease-purchase in which the private sector retains substantial risk, will be spread across the lease period. In all cases, the total amount of outlays scored over time against a bill will equal the amount of budget authority scored against that bill.

(continued...)

[1162] (...continued)

Implementation of the Rule. -- Contracts under existing authority will not be rescored. Purchases and lease-purchases will be scored on the basis of this rule starting in FY 1991. Multi-year leases will be scored consistent with current practice, rather than this rule, in FY 1991.

Further details. -- See "Addendum: Details on scoring purchases, lease-purchases, and leases".

12. *Write-offs of uncashed checks, unredeemed food stamps, and similar instruments*

Exceptional write-offs of uncashed checks, unredeemed food stamps, and similar instruments (i.e., write-offs of cumulative balances that have build up over several years or have been on the books for several years) shall be scored as an adjustment to the means of financing the deficit rather than as an offset. An estimate of write-offs or similar adjustments that are part of a continuing routine process shall be netted against outlays in the year in which the write-off will occur. Such write-offs shall be recorded in the account in which the outlay was originally recorded.

13. *Reclassification after an agreement*

Except to the extent assumed in a budget agreement, a law that has the effect of altering the classification of spending and revenues (e.g. from discretionary to mandatory, special fund to revolving fund, on-budget to off-budget, revenue to offsetting receipt), will not be scored as reclassified for the purpose of enforcing a budget agreement.

ADDENDUM: DETAILS ON SCORING PURCHASES, LEASE-PURCHASE, AND LEASES

Budget Authority. -- Budget authority scored against a bill will include all costs of the project except for imputed interest costs calculated at Treasury rates. Imputed interest costs will not be scored against a bill or for current level but will count for other purposes.

Criteria for Defining a Lease. -- Under a lease arrangement, ownership of the asset remains with the lessor during the term of the lease and is not transferred to the Government at or shortly after the end of the lease period. In addition, the Government should enter into the contract for limited use of an asset and not consume a substantial portion (75 percent) of its economic value. All risks of ownership of the asset (e.g. financial responsibility for destruction or loss of the asset) should remain with the lessor.

Illustrative Criteria Determining Private Risk. -- Legislation and lease-purchase contracts will be considered against the following type of illustrative criteria to evaluate the level of private-sector risk in a project.

(continued...)

[1162](...continued)

There should be no explicit government guarantee of third party financing.

All risks to ownership of the asset (e.g. financial responsibility for destruction or loss of the asset, etc.) should remain with the lessor unless the Government was at fault for such losses.

The asset should be a general purpose asset rather than for a special purpose of the Government and should not be built to unique specification for the Government as lessee. There should be a private-sector market for the asset.

The project should not be constructed on Government land.

Directed Scorekeeping. -- Language that attempts to waive the Anti-Deficiency Act, or to limit the amount of timing of obligations recorded, does not change the government's obligations or obligation authority, and so will not affect the scoring of budget authority or outlays.

Authority to Obligate. -- Unless bill language that authorizes a project clearly states that *no* obligations are allowed unless budget authority is provided specifically for that project in an Appropriations bill in advance of the obligation, the bill will be interpreted as providing obligation authority, in an amount to be estimated by the Congressional Budget Office (for the Congress) and the Office of Management and Budget (for the Executive).

APPROPRIATED ENTITLEMENTS AND MANDATORIES
FOR FISCAL YEAR 1991

Commerce-Justice-State

Payment to the Foreign Service retirement and disability fund
    19-0540-0-1-153
Fishermen's guaranty fund
    19-5121-0-2-376
Salaries of judges:
    Supreme Court, S&E[1]
        10-0100-0-1-752
    U.S. Court of International Trade[1]
        10-0400-0-1-752
    U.S. Court of Appeals[1]
        10-0510-0-1-752
    Courts of Appeals, District Courts, etc.[1]
        10-0920-0-1-752
Payment to judicial officers' retirement fund
    10-0941-0-1-752
Fees and expenses of witnesses
    15-0311-0-1-752
Independent counsel

(continued...)

[1162](...continued)
15-0327-0-1-752
Public Safety Officers benefits
15-0403-0-1-754
Civil liberties public education fund
15-0329-0-1-808

Defense

Payment to the Central Intelligence Agency retirement fund
56-3400-0-1-054

District of Columbia

No mandatory accounts.

Energy-Water

No mandatory accounts.

Foreign Operations

Housing and other credit guaranty programs
72-4340-0-3-151
Guarantee reserve fund
11-4121-0-3-152
Payment to the Foreign Service retirement and disability fund
11-1036-0-1-153

Interior

Miscellaneous trust funds
14-9971-0-7-302
Range improvements
14-5132-0-2-302
Administration of territories[2]
14-0412-0-1-808
Compact of free association[3]
14-0415-0-1-808

Labor-HHS-Education

Guaranteed student loans
91-0230-0-1-502
Higher education facilities loans
91-0240-0-1-502
College housing and academic facilities loans[4]
91-0242-0-1-502
Federal unemployment benefits and allowances (FUBA)
16-0326-0-1-504
16-0326-0-1-603

(continued...)

[1162](...continued)

Social services block grant
75-1634-0-1-506
Payments to States for foster care and adoption assistance
75-1645-0-1-506
Rehabilitation services and handicapped research
91-0301-0-1-506
Vaccine improvement program trust fund
20-8175-0-7-551[5]
Retirement pay and medical benefits for commissioned officers
75-0379-0-1-551
Medicaid
75-0512-0-1-551
Medical facilities guarantee and loan fund
75-4430-0-3-551
HMO loan and loan guarantee fund
75-4420-0-3-551
Health professions graduate student loan insurance fund
75-4305-0-3-553
Payments to health care trust funds
75-0580-0-1-571
Advances to the unemployment trust fund
16-0327-0-1-601
Special benefits
16-1521-0-1-601
16-1521-0-1-602
Black lung disability trust fund
20-8144-0-7-601
Federal payments to the railroad retirement accounts
60-0113-0-1-601
Special benefits for disabled coal miners
75-0409-0-1-601
Supplemental security income program[6]
75-0406-0-1-609
Family support payments to States
75-1501-0-1-609
Payments to States for family support activities
75-1509-0-1-609
Payments to social security trust funds
75-0404-0-1-651

Legislative Branch

Compensation of members, Senate
00-0100-0-1-801
Compensation of members, House
00-0200-0-1-801
Payments to widows and heirs of deceased members of Congress
00-0215-0-1-801
Payments to widows and heirs of deceased members of Congress - Senate

(continued...)

[1162](...continued)

	00-0115-0-1-801

Military Construction

No mandatory accounts.

Rural Development-Agriculture

Reimbursement to the rural electrification and telephone fund	12-3101-0-1-271
Conservation reserve program[7]	12-3319-0-1-302
Dairy indemnity program	12-3314-0-1-351
Temporary emergency food assistance program (TEFAP)[8]	12-3635-0-1-351
Federal Crop Insurance Corporation fund	12-4085-0-3-351
Agricultural credit insurance fund[9]	12-4140-0-3-351
Commodity Credit Corporation fund	12-4336-0-3-351
Payments to the farm credit system financial assistance corp.	20-1850-0-1-351
Rural housing insurance fund[9]	12-4141-0-3-371
Rural communication development fund	12-4142-0-3-452
Rural development insurance fund[9]	12-4155-0-3-452
Special milk program	12-3502-0-1-605
Food donations programs for selected groups[10]	12-3503-0-1-605
Food stamp program	12-3505-0-1-605
Child nutrition programs	12-3539-0-1-605
Nutrition assistance for Puerto Rico	12-3550-0-1-605
Funds for strengthening markets (section 32)[11]	12-5209-0-2-605

Transportation

WMATA, interest payments	46-0300-0-1-401
FAA, aircraft purchase loan guarantee program	69-1399-0-1-402
Coast Guard, retired pay	

(continued...)

[1162](...continued)
69-0241-01-403

Treasury-Postal Service

Payment to the Postal Service fund for non-funded liabilities
18-1004-0-1-372
Government payment for annuitants, employees health benefits
24-0206-0-1-551
Government payment for annuitants, employees life insurance
24-0500-0-1-602
Compensation of the President
11-0001-0-1-802
Payment of government losses in shipment
20-1710-0-1-803
Payment to civil service retirement and disability fund
24-0200-0-1-805

Veterans-HUD

FSLIC resolution fund
51-4065-0-3-371
Federal Housing Administration fund[12]
86-4070-0-3-371
Veterans Benefits Administration:
Insurance and indemnities
36-0120-0-1-701
Compensation
36-0153-0-1-701
Pensions
36-0154-0-1-701
Burial benefits
36-0155-0-1-701
Readjustment benefits
36-0137-0-1-702
Guaranty and indemnity fund
36-4023-0-3-704
Loan guaranty revolving fund
36-4025-0-3-704

[Notes for the list "APPROPRIATED ENTITLEMENTS AND MANDATORIES FOR FISCAL YEAR 1991" that appears in this note 1162, pp. 413-418:]

[1] Account split -- Only salaries of judges are mandatory.

[2] Account split -- The interest rate differential related to the Guam Power Authority refinancing and the Northern Marianas covenant will be scored as mandatory.

(continued...)

(b) ADJUSTMENTS TO DISCRETIONARY SPENDING LIMITS.[1163] -- (1) When the President submits the budget under section 1105(a)

[1162](...continued)

[3] Account split -- The account shall be split between mandatory payments (required by treaty) and discretionary costs.

[4] Account split -- Payment of interest to Treasury shall be scored as mandatory. Loan levels shall be scored as discretionary loan limitations and borrowing authority.

[5] The administrative expenses associated with this account are discretionary within the jurisdiction of the Commerce, Justice, State subcommittee.

[6] Account split -- Administrative expenses shall be scored as discretionary BA and outlays.

[7] Appropriations to fund an agreed-upon level of 40 million acre minimum specified in authorizing legislation shall be scored as mandatory. Appropriations above this level shall be scored as discretionary.

[8] Account split -- Only purchases of commodities for Hunger Prevention Act are mandatory.

[9] Account split -- Appropriations for losses will be scored as mandatory. Changes to loan levels allocated to authorizing committees will be scored as discretionary.

[10] Account split -- Only purchases of commodities for Hunger Prevention Act are mandatory.

[11] The entire account shall be scored as mandatory except to the extent that discretionary set asides are specified in appropriations language.

[12] Account split -- Payments for interest, net realized losses, and temporary mortgage assistance payments are mandatory. Administrative expenses transferred to Management and Administration and Inspector General accounts will be classified as a discretionary obligation limitation and outlays.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,170 (1990).

For additional legislative history on the accounting for lease-purchases, see *supra* note 26 (at the end of the definition of "budget authority" in section 3(2) of the Congressional Budget Act).

[1163] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

of title 31, United States Code, for budget year[1164] 1992, 1993, 1994, or 1995 (except as otherwise indicated), OMB[1165] shall calculate (in the order set forth below), and the budget shall include, adjustments to discretionary spending limits (and those limits as cumulatively adjusted) for the budget year and each outyear[1166] through 1995 to reflect the following:

(A) CHANGES IN CONCEPTS AND DEFINITIONS. -- The adjustments produced by the amendments made by title XIII of the Omnibus Budget Reconciliation Act of 1990 or by any other changes in concepts and definitions shall equal the baseline[1167] levels of new budget authority[1168] and outlays[1169] using up-to-date concepts and definitions minus those levels using the concepts and definitions in effect before such changes. Such other changes in concepts and definitions may only be made in consultation with the Committees on Appropriations, the Budget, Government Operations, and Governmental Affairs of the House of Representatives and Senate.

(B) CHANGES IN INFLATION. -- (i) For a budget submitted for budget year[1170] 1992, 1993, 1994, or 1995, the adjustments produced by changes in inflation shall equal

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[1164] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1165] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1166] Section 250(c)(14) defines "outyear." *See supra* p. 377.

[1167] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

[1168] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1169] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1170] Section 250(c)(12) defines "budget year." *See supra* p. 377.

the levels of discretionary new budget authority[1171] and outlays[1172] in the baseline[1173] (calculated using current[1174] estimates) subtracted from those levels in that baseline recalculated with the baseline inflators for the budget year only, multiplied by the inflation adjustment factor computed under clause (ii).

(ii) For a budget year[1175] the inflation adjustment factor shall equal the ratio between the level of year-over-year inflation measured for the fiscal year most recently completed and the applicable estimated level for that year set forth below:

For 1990, 1.041

For 1991, 1.052

For 1992, 1.041

For 1993, 1.033

Inflation shall be measured by the average of the estimated gross national product implicit price deflator index for a fiscal year divided by the average index for the prior fiscal year.

(C) CREDIT REESTIMATES. -- For a budget submitted for fiscal year 1993 or 1994, the adjustments produced by

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[1171] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1172] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1173] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

[1174] Section 250(c)(9) defines "current." *See supra* p. 376.

[1175] Section 250(c)(12) defines "budget year." *See supra* p. 377.

reestimates to costs of Federal credit programs shall be, for any such program, a current[1176] estimate of new budget authority[1177] and outlays[1178] associated with a baseline[1179] projection of the prior year's gross loan level for that program minus the baseline projection of the prior year's new budget authority and associated outlays for that program.

(2) When OMB[1180] submits a sequestration[1181] report under section 254(g) or (h) for fiscal year 1991, 1992, 1993, 1994, or 1995 (except as otherwise indicated), OMB shall calculate (in the order set forth below), and the sequestration report, and subsequent budgets submitted by the President under section 1105(a) of title 31, United States Code, shall include, adjustments to discretionary spending limits[1182] (and those limits as adjusted) for the fiscal year and each succeeding year through 1995, as follows:

(A) IRS FUNDING.-- To the extent that appropriations

[1176] Section 250(c)(9) defines "current." *See supra* p. 376.

[1177] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1178] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1179] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

[1180] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1181] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1182] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

are enacted that provide additional new budget authority[1183] or result in additional outlays[1184] (as compared with the CBO[1185] baseline[1186] constructed in June 1990) for the Internal Revenue Service compliance initiative in any fiscal year, the adjustments for that year shall be those amounts, but shall not exceed the amounts set forth below --

(i) for fiscal year 1991, $191,000,000 in new budget authority and $183,000,000 in outlays;

(ii) for fiscal year 1992, $172,000,000 in new budget authority and $169,000,000 in outlays;

(iii) for fiscal year 1993, $183,000,000 in new budget authority and $179,000,000 in outlays;

(iv) for fiscal year 1994, $187,000,000 in new budget authority and $183,000,000 in outlays; and

(v) for fiscal year 1995, $188,000,000 in new budget authority and $184,000,000 in outlays; and

the prior-year outlays resulting from these appropriations of budget authority.

(B) DEBT FORGIVENESS. -- If, in calendar year 1990 or 1991, an appropriation is enacted that forgives the Arab Republic of Egypt's foreign military sales indebtedness to the United States and any part of the Government of

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[1183] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1184] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1185] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1186] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

Poland's indebtedness to the United States, the adjustment shall be the estimated costs (in new budget authority[1187] and outlays,[1188] in all years) of that forgiveness.

(C) IMF FUNDING. -- If, in fiscal year 1991, 1992, 1993, 1994, or 1995 an appropriation is enacted to provide to the International Monetary Fund the dollar equivalent, in terms of Special Drawing Rights, of the increase in the United States quota as part of the International Monetary Fund Ninth General Review of Quotas, the adjustment shall be the amount provided by that appropriation.

(D) EMERGENCY APPROPRIATIONS. -- (i) If, for fiscal year 1991, 1992, 1993, 1994, or 1995, appropriations for discretionary accounts[1189] are enacted that the President designates as emergency requirements and that the Congress so designates in statute, the adjustment shall be the total of such appropriations in discretionary accounts designated as emergency requirements and the outlays[1190] flowing in all years from such appropriations.

(ii) The costs for operation Desert Shield are to be treated as emergency funding requirements not subject to the defense spending limits. Funding for Desert Shield will be provided through the normal legislative process. Desert Shield costs should be accommodated through Allied burden-sharing, subsequent appropriation Acts, and if the President so chooses, through offsets within other defense

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[1187] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1188] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1189] Section 250(c)(11) defines "account." *See supra* p. 377.

[1190] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

accounts.[1191] Emergency Desert Shield costs mean those incremental costs associated with the increase in operations in the Middle East and do not include costs that would be experienced by the Department of Defense as part of its normal operations absent Operation Desert Shield.[1192]

[1191] Section 250(c)(11) defines "account." *See supra* p. 377.

[1192] Compare the parallel provisions for emergencies for direct spending in section 252(e). *See infra* p. 454.

Note that section 250(c)(4) provides that "[c]ontributions to the United States to offset the cost of Operation Desert Shield shall not be counted within any category." *See supra* p. 373.

On January 16, 1991, the Defense Department transformed Operation Desert Shield into Operation Desert Storm, when the forces representing the coalition of nations opposed to the Iraqi invasion of Kuwait began hostilities with Iraq.

On February 5, 1991, the Director of the Office of Management and Budget sent the following letter to the Majority Leader, the Republican Leader, and the Chairmen and Ranking Republican Members of the Appropriations, Armed Services, and Budget Committees:

> Last week, the Senate Armed Services committee marked up several spending bills related to military personnel. Review of that mark-up suggests that some may not correctly understand the "emergency" and "Desert Shield" exemptions enacted last year in the Budget Enforcement Act of 1990 (BEA). I thought it would be useful to clarify the terms and implications of these exemptions, as we understand them.
>
> ### Exemption for Desert Shield
>
> The BEA contains a provision exempting the costs of Operation Desert Shield from the defense discretionary spending cap. That provision (section 251(b)(2)(D)(ii)) states, in relevant part:
>
> ". . . ."
>
> Only the "incremental costs" of Desert Shield qualify under this exemption. Thus, for example, S. 232, which increases life insurance coverage for everyone in the service -- regardless of any connection with or needs of Desert Shield -- would not qualify as incremental costs of Operation Desert Shield.
>
> Another limitation of the Desert Shield exemption from the caps is that it only applies to discretionary spending, not to direct or "mandatory" spending. Because of this limitation, S. 160, for example, would not qualify for

(continued...)

[1192] (...continued)
the Desert Shield exemption. S. 160 would extend the period of unemployment compensation for separated military personnel. Expansion of unemployment benefits increases mandatory spending, not discretionary spending. (And, consistent with the previous point, even if mandatory programs were exempt -- which they are not -- a general increase in unemployment insurance would not qualify for the Desert Shield exemption because its focus would be far broader than that necessary to qualify as incrementally related to Desert Shield.)

Exemption For Emergencies

The BEA contains provisions exempting Presidentially determined emergency spending from both the caps on discretionary spending and the pay-as-you-go requirement for mandatory spending. The exemption for discretionary spending (Section 251(b)(2)(D)) applies if appropriations are enacted--

> "that the President designates as emergency requirements and that the Congress so designates in statute . . ." (Section 251 (b)(2)(D))

The exemption for emergency mandatory spending is virtually identical (Section 252(e)).

These provisions require a Presidential designation that an appropriation or mandatory spending provision is an emergency requirement. Without a Presidential designation, a congressional designation of an emergency does not trigger this exemption.

A second requirement of these exemptions is that there must be an "emergency requirement." Bills that provide spending that is not required to meet a true emergency do not qualify. For example, S. 160 generally and permanently extends the period of unemployment compensation for all former service members. This is not a requirement to meet a true emergency. An emergency is usually a sudden, urgent and unforeseen situation, and not a permanent condition.

Relation of these Provisions to Sequester

It is important to be clear about how these provisions relate to potential sequesters, so that there are no surprises later, after enactment of legislation attempting to invoke these provisions. If an appropriations bill that exceeds the cap for a category is enacted in the mistaken belief that the excess spending is exempt as an emergency or Desert Shield cost, a sequester will occur 15 days after the end of the session, unless legislation that offsets the increase is also enacted. The sequester will be the amount of the increased spending that is not offset.

I hope you may find these clarifications of our understanding helpful. I am anxious to assure that we avoid misunderstandings or unforeseen consequences as Congress begins to consider spending bills this year -- and
(continued...)

[1192] (...continued)
look forward to working with you in what may be a continuing effort to clarify interpretation of the new Budget Act.

Letter from Richard Darman to Sen. Jim Sasser (Feb. 5, 1991).

How do the Congress and the President designate spending to be emergency requirements? The drafters of the Budget Enforcement Act first discussed the possibility that the President would have to initiate all emergency spending proposals, but rejected that option, agreeing that Congress -- just as the President -- should have the ability to initiate emergency spending proposals. Thus the drafters of the Act agreed that the President could designate spending as an emergency requirement at any time during the legislative and constitutional process. On the outside limit, the President would have to act before the Office of Management and Budget issued its estimate of the cost of the provision 5 days after enactment.

Does the President's signing a bill designating emergency spending indicate the President's designation of that spending as an emergency requirement? The answer hinges on legislative drafting. One can distinguish three cases.

First, Congress may write legislation stating: "Pursuant to section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985, Congress designates the spending provided in section 1 as emergency requirements." The intent of this legislation would be plain. Congress would be playing its part in the process envisioned by section 251(b)(2)(D), inviting the President to designate spending as an emergency. The President could sign such legislation and simultaneously announce his or her choice that such spending was not emergency spending.

Second, Congress could write legislation stating: "Notwithstanding section 251(b)(2)(D) of the Balanced Budget and Emergency Deficit Control Act of 1985, the spending provided in section 1 shall be considered emergency requirements within the meaning of that Act." Once again, the intent here is plain. Congress would be legislating later-enacted law to supersede the provisions in the Budget Enforcement Act granting the President authority to designate spending as an emergency requirement. In this case, the President's act of signing the legislation would end the discussion, and the later-enacted provision directing the President to consider the section an emergency requirement would control. It would not matter what the President said in the signing statement. The President would have no legal basis to disregard the later-enacted statute in favor of the Budget Enforcement Act provisions as originally drafted.

Third, Congress could write legislation stating: "Any spending provided in section 1 is an emergency requirement." Here the intent of Congress is unclear. Is Congress merely exercising its option under section 251(b)(2)(D) of Gramm-Rudman-Hollings to designate, awaiting the President's designation? Alternatively, is Congress thereby legislating later-enacted law that intends to wrest the designation of emergency away from the President? The prudent drafter should avoid the ambiguity of this third option and opt for one of the two others.

(E) SPECIAL ALLOWANCE FOR DISCRETIONARY NEW BUDGET AUTHORITY.[1193] -- (i) For each of fiscal years 1992 and 1993, the adjustment for the domestic category[1194] in each year shall be an amount equal to 0.1 percent of the sum of the adjusted discretionary spending limits[1195] on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively), together with outlays[1196] associated therewith (calculated at the composite outlay rate[1197] for the domestic category);

(ii) for each of fiscal years 1992 and 1993, the adjustment for the international category[1198] in each year shall be an amount equal to 0.079 percent of the sum of the adjusted discretionary spending limits[1199] on new budget authority[1200] for all categories for fiscal years 1991, 1992, and 1993 (cumulatively), together with outlays[1201] associated

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[1193] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1194] Section 250(c)(4) defines "category." *See supra* p. 373.

[1195] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1196] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1197] Section 250(c)(20) defines "composite outlay rate." *See supra* p. 378.

[1198] Section 250(c)(4) defines "category." *See supra* p. 373.

[1199] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1200] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1201] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

therewith (calculated at the composite outlay rate[1202] for the international category); and

(iii) If, for fiscal years 1992 and 1993, the amount of new budget authority[1203] provided in appropriation Acts exceeds the discretionary spending limit[1204] on new budget authority for any category[1205] due to technical estimates made by the Director of the Office of Management and Budget, the adjustment is the amount of the excess, but not to exceed an amount (for 1992 and 1993 together) equal to 0.042 percent of the sum of the adjusted discretionary limits on new budget authority for all categories for fiscal years 1991, 1992, and 1993 (cumulatively).

(F) SPECIAL OUTLAY ALLOWANCE. -- If in any fiscal year outlays[1206] for a category[1207] exceed the discretionary spending limit[1208] for that category but new budget authority[1209] does not exceed its limit for that category (after

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[1202] Section 250(c)(20) defines "composite outlay rate." *See supra* p. 378.

[1203] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1204] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1205] Section 250(c)(4) defines "category." *See supra* p. 373.

[1206] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1207] Section 250(c)(4) defines "category." *See supra* p. 373.

[1208] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1209] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

application of the first step of a sequestration[1210] described in subsection (a)(2), if necessary), the adjustment in outlays is the amount of the excess, but not to exceed $2,500,000,000 in the defense category, $1,500,000,000 in the international category, or $2,500,000,000 in the domestic category (as applicable) in fiscal year 1991, 1992, or 1993, and not to exceed $6,500,000,000 in fiscal year 1994 or 1995 less any of the outlay adjustments made under subparagraph (E) for a category for a fiscal year.[1211]

[1210] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1211] Section 13101(a) of the Budget Enforcement Act amended section 251 to read as it does now. *See infra* p. 617. The statement of managers accompanying the conference report on the Budget Enforcement Act explains section 251 generally:

I. ENFORCING DISCRETIONARY SPENDING LIMITS

Current law

Under the Congressional Budget Act of 1974, the Senate and the House of Representatives limit discretionary spending primarily through overall allocations to their respective Appropriations Committees in the joint statement of the managers accompanying the concurrent resolution on the budget. These allocations, made pursuant to section 302(a) of the Congressional Budget Act of 1974, are sometimes called "302(a)s" or "crosswalks." All committees must then divide these allocations among their subcommittees or programs. The Committees on Appropriations -- which have jurisdiction over discretionary spending -- must divide the allocations among their 13 subcommittees (including their Subcommittees on Defense and on Foreign Operations) under section 302(b) of the Congressional Budget Act. A point of order (requiring 60 votes to waive in the Senate and a simple majority to waive in the House) lies against any legislation that would cause spending to exceed these subdivided limits.

House bill

The House bill sets forth, in a new section of the Congressio[n]al Budget Act, limits for discretionary spending in three categories -- defense, international, and domestic -- for fiscal years 1991 through 1993, and in one category-discretionary spending -- for fiscal years 1994 and 1995. The House bill creates a new mechanism for across-the-board cuts -- called "sequestration" -- within a category if discretionary spending for a fiscal year exceeds spending in that category. The President orders these cuts for that fiscal year within 15 days after the end of a session. Under a "look-back" procedure, if legislation is enacted for that fiscal year in the next session that causes spending to exceed a category's limit, then the applicable spending limits for the next fiscal year are reduced accordingly, and a further sequestration occurs

(continued...)

[1211] (...continued)
unless appropriations legislation adjusts spending downward.

The initial limits proposed by the House include separate amounts of new budget authority and outlays by category (for fiscal years 1991 through 1993) and by total (for fiscal years 1994 and 1995).

The House bill provides that the President shall adjust the spending limits in the annual budget submission for changes in concepts and definitions, inflation, credit reestimates, Internal Revenue Service compliance funding, debt forgiveness, International Monetary Fund funding, Presidentially-determined emergencies, and for limited defined special allowances.

Senate amendment

The Senate amendment sets forth as a freestanding part of the Omnibus Budget Reconciliation Act of 1990 limits for discretionary spending in the same categories and for the same years as in the House bill. The Senate amendment also creates a new mechanism for across-the-board cuts -- called "sequestration" -- within a category if discretionary spending exceeds spending for that category. In the Senate amendment, however, the President orders these cuts on November 15 for appropriations bills enacted before November 1 or after June 30 of a fiscal year, or 15 days after enactment for bills enacted between October 31 and July 1.

The initial limits on discretionary spending proposed by the Senate are the same as those proposed by the House. As does the House bill, the Senate amendment provides that the President may adjust the spending limits in the annual budget submission for changes in inflation, credit reestimates, Internal Revenue Service compliance funding, International Monetary Fund funding, Presidentially-determined emergencies, and for limited defined special allowances.

The Senate amendment allows for changes in the definition of "budget authority" (which it changes elsewhere) -- but not changes in other concepts and definitions, and allows for adjustment for debt forgiveness for the Arab Republic of Egypt and the Polish government -- but not other debts.

Conference agreement

The conference agreement establishes the limits on discretionary spending by category, as proposed by the House and Senate, as a new title VI of the Congressional Budget Act of 1974.

The initial limits on discretionary spending are as follows (in billions of dollars):

(continued...)

[1211](...continued)

	Fiscal year –				
	1991	1992	1993	1994	1995
Defense:					
Budget Authority	288.918	291.643	291.785		
Outlays	297.660	295.744	292.686		
International:					
Budget Authority	20.100	20.500	21.400		
Outlays	18.600	19.100	19.600		
Domestic:					
Budget Authority	182.700	191.300	198.300		
Outlays	198.100	210.100	221.700		
Total Discretionary:					
Budget Authority				510.800	517.700
Outlays				534.800	540.800

The President shall adjust the spending limits according to the method proposed by the House, except with regard to limited defined special allowances. The conference agreement accepts the Senate approach for adjustments for the International Monetary Fund and debt forgiveness. The special allowances authorize the President to adjust the spending limits for new budget authority and associated outlays by specified percentages, depending on the spending category and the fiscal year. Outlay limits for categories of discretionary spending also shall be increased by specified dollar amounts so long as the budget authority limits for the applicable categories are not breached; this special outlay allowance insulates the legislative process from estimating differences.

The conference agreement accepts a compromise mechanism for initiating across-the-board spending cuts if discretionary spending limits are breached. During the session in which the fiscal year begins, the enactment of legislation causing a breach in the spending limits of any category would trigger a presidential sequestration order that would impose across-the-board cuts in that category bringing spending down to the established limits. This presidential sequestration order would be issued within 15 days after the end of a session of Congress. During the following session, the enactment of legislation causing a breach in the

(continued...)

[1211] (...continued)

spending limits would trigger sequestration 15 days after enactment if the legislation were enacted before July 1, or would reduce the applicable spending limits for the next fiscal year by the amount of the breach if the legislation were enacted on or after July 1.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,151-53 (1990).

SEC. 252. ENFORCING PAY-AS-YOU-GO.[1212]

(a) Fiscal Years 1992-1995 Enforcement. -- The purpose of this section is to assure that any legislation (enacted after the date of enactment of this section[1213]) affecting direct spending[1214] or receipts that increases the deficit[1215] in any fiscal year covered by this Act will trigger an offsetting sequestration.[1216]

(b) Sequestration;[1217] Look-back. -- Within 15 calendar days after Congress adjourns[1218] to end a session (other than of the One Hundred First Congress) and on the same day as a sequestration (if any) under section 251 and section 253, there shall be a sequestration to offset the amount of any net deficit[1219] increase in that fiscal year and the prior fiscal year

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[1212] Section 13101(a) of the Budget Enforcement Act amended section 252 to read as it does now. *See infra* p. 617. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act explaining section 252, see *infra* note 1253.

[1213] Section 250(c)(17) provides:

> (17) For purposes of sections 252 and 253, legislation enacted during the second session of the One Hundred First Congress shall be deemed to have been enacted before the enactment of this Act.

See supra p. 377.

[1214] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1215] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1216] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1217] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1218] What happens if the Congress recesses to end the first session of a Congress? Congress plainly intended to require annual review of legislation. (For example, the use of the words "in that fiscal year" later in this sentence indicate an annual review.) This language should be read as "adjourns or recesses to end a session."

[1219] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

caused by all direct spending[1220] and receipts legislation enacted after the date of enactment of this section (after adjusting for any prior sequestration as provided by paragraph (2)). OMB[1221] shall calculate the amount of deficit increase, if any, in those fiscal years by adding --

(1) all applicable estimates of direct spending[1222] and receipts legislation transmitted under subsection (d) applicable to those fiscal years, other than any amounts included in such estimates resulting from --

(A) full funding of, and continuation of, the deposit insurance[1223] guarantee commitment in effect on the date of enactment of this section, and

(B) emergency provisions as designated under subsection (e); and

(2) the estimated amount of savings in direct spending[1224] programs applicable to those fiscal years resulting from the prior year's sequestration[1225] under this section or section 253, if any (except for any amounts sequestered[1226] as a result of a net deficit[1227] increase in the fiscal year immediately preceding the prior fiscal year), as

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[1220] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1221] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1222] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1223] Section 250(c)(19) defines "deposit insurance." *See supra* p. 378.

[1224] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1225] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1226] Section 250(c)(2) defines "sequester." *See supra* p. 372.

[1227] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

published in OMB's[1228] end-of-session sequestration report for that prior year.

(c)[1229] ELIMINATING A DEFICIT[1230] INCREASE. -- (1) The amount required to be sequestered[1231] in a fiscal year under subsection (b) shall be obtained from non-exempt direct spending[1232] accounts[1233] from actions taken in the following order:

(A) FIRST. -- All reductions in automatic spending increases specified in section 256(a) shall be made.

(B) SECOND. -- If additional reductions in direct spending[1234] accounts[1235] are required to be made, the maximum reductions permissible under sections 256(b) (guaranteed student loans) and 256(c) (foster care and adoption assistance) shall be made.

(C) THIRD. -- (i) If additional reductions in direct

[1228] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1229] Before enactment of the Budget Enforcement Act, section 252(c) dealt with the President's proposal of flexibility among defense programs, projects, and activities. Section 13101(a) of the Budget Enforcement Act repealed the old section 252(c). *See infra* p. 617. Section 13101(g) of the Budget Enforcement Act (*see infra* p. 621) added a new section 258B to Gramm-Rudman-Hollings (*see infra* pp. 565-573) based on the old section 252(c) to deal with the President's proposal of flexibility among defense programs. For the text of the old section 252(c), see *infra* note 1603.

[1230] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1231] Section 250(c)(2) defines "sequester." *See supra* p. 372.

[1232] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1233] Section 250(c)(11) defines "account." *See supra* p. 377.

[1234] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1235] Section 250(c)(11) defines "account." *See supra* p. 377.

spending[1236] accounts[1237] are required to be made, each remaining non-exempt direct spending account shall be reduced by the uniform percentage necessary to make the reductions in direct spending required by paragraph (1); except that the medicare programs specified in section 256(d) shall not be reduced by more than 4 percent and the uniform percentage applicable to all other direct spending programs under this paragraph shall be increased (if necessary) to a level sufficient to achieve the required reduction in direct spending.

(ii) For purposes of determining reductions under clause (i),[1238] outlay[1239] reductions (as a result of sequestration[1240] of Commodity Credit Corporation commodity price support contracts in the fiscal year of a sequestration) that would occur in the following fiscal year shall be credited as outlay reductions in the fiscal year of the sequestration.

(2) For purposes of this subsection, accounts[1241] shall be assumed to be at the level in the baseline.[1242]

(d) OMB[1243] ESTIMATES. -- As soon as practicable after Con-

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[1236] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1237] Section 250(c)(11) defines "account." *See supra* p. 377.

[1238] *See supra* p. 435. This rule for crediting Commodity Credit Corporation outlay reductions should also apply for purposes of determining sequestration savings under subsection (b)(2) (*see supra* p. 434) and section 253. *See infra* pp. 457-473.

[1239] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1240] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1241] Section 250(c)(11) defines "account." *See supra* p. 377.

[1242] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

[1243] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

gress completes action on any direct spending[1244] or receipts legislation enacted after the date of enactment of this section, after consultation with the Committees on the Budget of the House of Representatives and the Senate, CBO[1245] shall provide OMB with an estimate of the amount of change[1246] in outlays[1247] or receipts, as the case may be, in each fiscal year through fiscal year 1995 resulting from that legislation. Within 5 calendar days after the enactment of any direct spending or receipts legislation enacted after the date of enactment of this section, OMB shall transmit a report to the House of Representatives and to the Senate containing such CBO estimate of that legislation, an OMB estimate of the amount of change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1995 resulting from that legislation, and an explanation of any difference between the two estimates. Those OMB estimates shall be made using current[1248] economic and technical assumptions. OMB and CBO shall prepare estimates under this paragraph in conformance with scorekeeping guidelines determined after consultation among the House and Senate Committees on the Budget, CBO, and OMB.[1249]

[1244] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1245] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1246] This reference to "change" means change as measured relative to the baseline pursuant to section 257. *See infra* pp. 529-541.

[1247] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1248] Section 250(c)(9) defines "current." *See supra* p. 376.

[1249] The statement of managers accompanying the conference report on the Budget Enforcement Act expressed concern regarding the powers conferred on the Office of Management and Budget by this paragraph and set forth the scorekeeping guidelines to which this paragraph refers. *See supra* note 1162.

On January 3, 1991, the House of Representatives adopted a change in the Rules of the House of Representatives to address this concern:

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H. RES. 5

Resolved, That the Rules of the House of Representatives of the One Hundred First Congress, including all applicable provisions of law and concurrent resolutions adopted pursuant thereto which constituted the Rules of the House at the end of the One Hundred First Congress, be, and they are hereby, adopted as the Rules of the House of Representatives of the One Hundred Second Congress, with the following amendments included therein as part thereof, to wit:

. . . .

(10) In rule XXI, add at the end the following new clause:

"8. It shall not be in order to consider a bill, joint resolution, or conference report providing, increasing, or decreasing receipts or direct spending (as defined in section 250(c) of the Balanced Budget and Emergency Deficit Control Act of 1985), unless the conference report or bill or joint resolution as reported contains the following statement of law: 'The applicable cost estimate of this Act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows: _____.'. The blank shall be filled with a cost estimate provided by the Congressional Budget Office (prepared in consultation with the Joint Committee on Taxation where appropriate pursuant to section 201(g) of the Congressional Budget Act of 1974). The cost estimate shall be in writing and shall be signed, and shall contain an estimate of the amount of the change in outlays or receipts, as the case may be, in each fiscal year through fiscal year 1995, resulting from the conference report or bill or joint resolution as reported.".

. . . .

H. Res. 5, 102d Cong., 1st Sess., 137 CONG. REC. H5-6 (Jan. 3, 1991).

A document distributed at the House Democratic Caucus explained the change:

EXPLANATION

(Providing for CBO Cost Estimates to be included as a Matter of Law in Direct Spending or Receipts Legislation)

This rules change would enhance informed and deliberate fiscal decisions by Congress through a mechanism to incorporate a statutory statement of cost, provided by the Congressional Budget Office, into spending or revenue bills which affect the deficit. Since the Office of Management and Budget has often issued final cost estimates widely at odds with the CBO projections on which Congress has relied, and since those estimates have controlled the operation of the Balanced Budget and Emergency Deficit Control Act of 1985, the constitutional power and responsibility of Congress over the purse has been eroded for lack of certainty and predictability over the ultimate

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> impact of legislation on the deficit. Under new budget reform measures enacted in the reconciliation bill at the end of the last session of Congress, it is even more imperative that Congress know the cost of legislation; under "pay-as-you-go" procedures (in section 252 of the new law), a sequestration on all direct spending programs is required to offset deficit increases caused by new direct spending or receipts legislation. Congress should not unintentionally allow such a result to occur.
>
> The rules change would require reported bills and conference reports to contain a statement of law codifying the CBO cost estimate, through fiscal year 1995, for the purposes of pay-as-you-go sequestration, which applies through fiscal year 1995. It is expected that the CBO estimate would be to the nearest million dollars. The statement of law would also ensure that the same CBO estimate is used for calculating the cost of the legislation for purposes of an end-of-the-session general sequestration. A point of order would lie against a bill or conference report in violation of this requirement. Since pay-as-you-go sequestration does not apply to discretionary appropriations, the new rule would not apply to appropriation bills.
>
> It is expected that committees considering direct spending and receipts legislation will work together with the leadership, the Committee on Rules, the Committee on the Budget, and CBO at every step of the legislative process, and with the Senate, to ensure that the CBO cost estimate ultimately contained in the legislation is based on the actual provisions of the bill and is the most recent, current and comprehensive such estimate.

The following are excerpts from the debate on the House floor during consideration of the rule change on January 3, 1991:

> Mr. FROST. Mr. Speaker, House Resolution 5 contains changes to the rules of the House of Representatives recommended for inclusion in the rules of the House for the 102d Congress. For the most part, the package contains amendments to the rules of the 101st Congress which are technical, clarifying, and confronting in nature or which eliminate obsolete provisions. Two of the recommended amendments, however, substantially affect the operations of the House. Those amendments will be explained in some detail in my statement and at this time I would like to take a few minutes to briefly summarize the recommended changes to the rules of the House.
>
> . . . .
>
> The 10th amendment is a matter of some substance. Mr. Speaker, this amendment would enhance informed and deliberate fiscal decisions by the Congress by incorporating a statutory statement of cost, provided by the Congressional Budget Office, into spending our revenue bills. Under the budget reform measures enacted at the end of the 101st Congress as part of the reconciliation package, it is imperative that Congress know the cost of legislation because, under the new pay-as-you-go procedure, a sequestration on all nonexempt entitlement programs is required to offset deficit increases caused by new entitlement and revenue legislation.

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This amendment to rule XXI would require reported bills and conference reports to contain a statement of law codifying the CBO cost estimate for such bills and conference reports, through fiscal year 1995, for the purposes of pay-as-you-go sequestration. This statement of law will also ensure that the same CBO estimate is used for calculating the cost of legislation for purposes of any end-of-the-session sequestration applying to direct spending. A point of order would lie against a bill or conference report in violation of this requirement.

It is the opinion of the Democratic caucus that CBO cost estimates most accurately reflect the will of Congress and ensures that the scoring of these measures will be performed by an agency without any policy interests in the legislation which it is evaluating. The rule also ensures that Members will know when they vote on entitlement and revenue legislation whether enactment of such legislation may result in a sequester of all nonexempt direct spending programs, including Medicare.

. . . .

Mr. SOLOMON. . . .

. . . .

. . . Mr. Speaker, just look at what the Democrat caucus serves up on opening day in the way of House rules changes. Take a hard look at your Democrat caucus resolution of House rule changes. Instead of toughening up the budget enforcement, they are already going back on last year's budget summit agreements.

Pay-as-you-go enforcement provisions, remember that? Remember all the talk about that on that side of the aisle? By substituting the Congressional Budget Office cost estimates in bills for session-end Office of Management and budget scorekeeping, you are opening the way for all kinds of games and abuses. The American people do not want that. Instead of the highly touted system of pay-as-you-go, you have turned this whole budget process back to play-as-you-go, or something else, the same old system that got us into the irresponsible fiscal mess we are in today. And to the American people, that is called pay-through-the-nose, and they are sick of it, gentlemen. The truth is, the Democrat caucus broke faith with the American people before the ink was even dry on the so-called deficit reduction budget agreement. You ought to listen to this upstairs in the Press Gallery: A plan that cemented into law a $165 billion tax increase on the American people conveniently left the door open for the Democrat caucus to weasel out of any meaningful spending cuts.

Mr. Speaker, I am embarrassed. I am embarrassed for your Democratic Party. I am embar[r]assed for the American people.

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Mr. Speaker and my colleagues, as I mentioned at the outset, it is outrageously arrogant to bring a resolution containing sweeping rules changes to this floor and be limited to only 1 hour of debate, particularly when the new rules completely unravel the Deficit Reduction Act that took months and months and months to accomplish.

But the time has come for you to be counted. Will this House vote yes to change the rules, thereby reaffirming the $165 billion tax increase on the American people last year? But at the same time, today, you are removing the one major enforcement procedure that controls spending in the Deficit Reduction Act. Or will you vote "no" with us to higher taxes? "No" to more taxes that are not tied to spending reductions and controls? That is what we are voting on here today. . . .

. . . .

Mr. GEPHARDT. . . .

Mr. Speaker, I would like to respond briefly to the assertion that there is a breaking of the budget agreement through the imposition of the language of these rules. I would like to, in particular, express some thoughts about the controversy over OMB and CBO scoring, and what exactly was said in the summit, and how it was resolved.

Congressional participants in the summit repeatedly expressed concern to administration officials about the possibility of abusing the scorekeeping process as a way to achieve the administration's policy goals. As a result of these concerns, participants explored ways to minimize the possibility for manipulation.

Two basic approaches were considered. First, participants considered providing an estimating cushion for the pay-as-you-go sequester. This approach was strenuously opposed by several Republican congressional participants. When this approach proved unacceptable, OMB officials offered an alternative under which the OMB would provide a cost estimate at each stage of the legislative process which would then be binding on the agency. Although this alternative was only discussed in general terms, the estimate for a conference report would presumably be required to be available prior to the consideration of the conference report in each House, and OMB would be required to use that estimate for purposes of sequester calculations. Congressional participants strongly opposed this approach because it would necessitate, and indeed institutionalize, formal involvement by OMB and its staff in every aspect of legislative deliberation. This approach, in fact, could have given OMB more leverage over the legislative process than the approach contained in the new law, under which OMB's estimates of legislation are due after enactment.

In the end, it was not possible to reach a compromise on the issue of scorekeeping differences in direct spending and receipts legislation. When it

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became clear that we could not resolve this issue, we told administration officials that there was a real possibility that CBO scoring would be included in legislation presented to the President during the 102d Congress.

As we all know, this issue was raised in the final meeting on the budget, on October 26, 1990, hours before the reconciliation conference report was filed. The fact that it was not resolved to the satisfaction of congressional participants and that concerns remained about possible abuse of scorekeeping by OMB, and supported by the very fact of the agreement reached in the final meeting to require OMB and CBO to study differences in scorekeeping and provide a report to the Congress on this issue.

I would say that, if this rule is adopted, there are obvious alternatives that are available to the minority and to the administration.

First, it is critical to recognize that the new rule applies only to a subset of legislation considered by the House. It does not apply to appropriations or authorizations, but only to measures involving direct spending and receipts.

Second, if minority Members or others believe that the CBO estimate contained in the measure as reported is erroneous or inappropriate, they may seek to amend or strike the cost estimate.

In addition, a chairman who opposes the inclusion of the CBO estimate or believes it is unnecessary for a continuing measure may seek a waiver of the rule.

Third, since this is a House rule only, the issue as to whether to include the CBO estimate will be an issue for conference, and those who oppose inclusion can seek support for this position in the Senate.

Finally, of course, as the President's letter illustrates, the President can veto a bill which includes the CBO estimate, and he can also of course use the threat of veto to reach an accommodation on the scoring of a particular bill.

Finally, I think it is important to note that on the final meeting on October 26, again we did agree to require OMB and CBO to review their scorekeeping differences and report back to the Congress in May of 1991.

It well may be that the concerns that are felt on both sides can be bridged if some of the differences on scoring can indeed be bridged.

So, I really believe that this is an appropriate solution to this problem, and I am hopeful that in May of 1991 the problem can be put aside forever.

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Mr. MICHEL. Mr. Speaker, I rise in opposition to the proposed
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package of rules offered by the Democrats . . . .

> Mr. Speaker, the majority's rules package offers us an inheritance of misery. . . . And a unilateral change in the budget agreement against all precedent and against our tradition of keeping our word.
>
> Now I understand the situation a little bit differently than the distinguished majority leader, the gentleman from Missouri [Mr. GEPHARDT]. The Democratic rules package, in my judgment, reneges on that bipartisan budget agreement, just enacted less than 2 months ago. Quite frankly the discussion centered on enforcement and that was why we agreed as we did. Now to say, "Well, we've got a different view of it, and we're going to avoid subscribing to an agreement that we so judiciously agreed to just a short time ago." It is one thing to say there was always that opportunity for us to change the agreement by law, and that is true. To change the law by joint resolution, however, requires the President's signature.
>
> But the Democrats are not doing that. They are attempting to bypass that whole procedure by incorporating the change in a rule. They create a point of order that can be raised against spending and receipts legislation unless a provision is inserted in that particular piece of legislation with CBO's scorekeeping.
>
> Now that just flies directly in the face of the controversial issue of enforcement that we discussed at length in the budget agreement. One of the reasons I supported the budget agreement was, notwithstanding the tax increases that we had, we thought we had bona fide spending cuts that were bound by law and could not be changed. If we were to have any increases, we would also have offsets, otherwise a minisequester would occur. Now what the Democrats are attempting to do by the rules, not by a law, is to subjugate all those deliberations we had over that protracted period of time and duck the strong enforcement provisions agreed to by the participants.
>
> Mr. Speaker, that is why we are offended. An agreement is an agreement. I talked about in my introduction of the Speaker about dealing fairly and squarely with people and honoring one's word. That has always been my method of operation around here, to have my word as good as my bond, as good as gold. It is disappointing when we break that word between agreeing parties, particularly in regard to the one piece of legislation that was so profound in this last session as to be maligned, and criticized and talked about for months. My view had always been, "You wait until next year and we'll show you how we have brought about some good by these spending caps written into law, and so hard to get around and avoid."
>
> And what you are attempting to do here is circumvent the strong enforcement by this change in the rules. It is really in my judgment unconscionable. So obviously, I have to take exception to the rules you are proposing and urge my colleagues to vote down the previous question so that we may substitute our package of rules so well portrayed by the distinguished gentleman from New York [Mr. SOLOMON].

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Mr. ROSTENKOWSKI. Mr. Speaker, I rise in support of the proposed changes to the House rules. Some are alleging that the House rule requiring Congressional Budget Office and Joint Committee on Taxation outlay and revenue estimates to be included in revenue and entitlement bills undermines the credibility of the 1990 budget agreement. This is simply not the case. Instead, the proposed rule sends a strong message that we intend to live up to the agreement.

The budget agreement specified that any legislation which increased outlays for an entitlement program or reduced revenues must be paid for in each and every year for the next 5 years. To enforce that requirement, it was agreed that there would be an across-the-board, automatic cut in nonexempt direct spending programs if a bill were passed that was not budget neutral. The practical effect of this pay-as-you-go financing requirement will be that the Medicare Program will automatically be reduced or sequestered, and will compensate for about 80 percent of any enacted legislation which is not budget neutral. Members have a right to know when they cast their vote on the House floor whether or not Medicare and other direct spending entitlement laws are being changed. The proposed change to the House rule ensures that each Member will have this information.

The Committee on Ways and Means has lived up to the pay-as-you-go requirement for the past decade. For example, the Tax Reform Act of 1986 was revenue neutral over a 5-year period; the Family Support Act of 1988 was budget neutral; the catastrophic health insurance bill was budget neutral; and the child care bill approved by the committee last year was fully budget neutral.

To ensure that Medicare and other direct spending programs are not inadvertently sequestered requires that bills reported from a committee be budget neutral. This requires that cost estimates be prepared on each and every amendment that is offered in committee. OMB does not have the capacity or the staff to perform such a function. Furthermore, the Congressional Budget Office and the Joint Committee on Taxation already ably prepare cost estimates which are both independent and objective.

In addition, it is my view that last year's budget negotiators did not intend for OMB of this or any other administration to have the right to be involved in the day-to-day legislative activities of the Congress and its committees. Our system of government requires that the legislative branch be an equal and separate entity. That implies that Congress should work with congressional branch agencies in developing our legislative products. CBO and the Joint Committee on Taxation are independent of any member here. They are not political entities and their estimates reflect nonpartisan, objective analysis. By its very nature, OMB cannot make the same claim. Without this rule, the Director of OMB would have to review and prepare a cost analysis of any "chairman's mark" whether in the Ways and Means Committee or in

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any other committee of the Congress as well as all amendments that members wished to propose. This would be offensive to me as chairman and should be offensive to all Members of Congress on both sides of the aisle.

If the President believes that a bill is not budget neutral and that the CBO and JCT estimates that are included in a bill are substantially off the mark, the President can exercise his constitutional right to veto such a bill. I would hope that would not be necessary.

Finally, Mr. Speaker, this proposed rules change is important to ensure that the congressional budget process enforces the pay-as-you-go concept in the 1990 budget agreement. I fully intend to support and enforce the pay-as-you-go discipline in my committee since it is a discipline that I have imposed on the Ways and Means Committee for the last decade. I urge all Members to support the rules change.

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Mr. CONTE. . . . I rise in opposition to the rule.

Mr. Speaker, today, amidst the pomp and circumstance of a new Congress, we set the rules of the road by which this Chamber will operate for the next 2 years.

Now, as one of our first acts, we are invited to undo one of the major achievements of the last Congress.

For the first time, the President and the Congress agreed to try to control the fastest growing costs of government-the entitlement programs that spend automatically, without control. We said, if Congress wants new automatic spending programs, it has got to pay for them -- pay-as-you-go.

Fiscal responsibility. The law gave the Office of Management and Budget the job of assuring the new spending was fully paid for. That was a conservative provision, no doubt about it. OMB is more concerned about the paying than the going.

Now, less than 3 months later, before this provision has even been tested, the majority wants to change that agreement. Unilaterally, they have decided they don't like that conservative restraint on new automatic spending. And that is what is most distressing.

Here we go. The most fundamental question facing the Congress today is whether we can get the deficit under control. We made a fragile, 5-year agreement with the administration to move toward controlling the deficit. And now, we are invited to start unraveling it.

The message is clear. If this rules change passes, Congress shows there is one thing it wants more than pay-as-you-go -- it's play-as-you-go.

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Support the effort to commit the majority rules change proposal. Strike the deal-breaking erosion of fiscal restraint.

. . . .

Mr. GINGRICH. Mr. Speaker, let me say first of all that this vote will be a case study in why the American people are increasingly angry at Congress. Just a few months ago the taxpayers were told they have to pay more taxes in a budget deal, but that political spending in Washington will be controlled for 5 years.

Now, on the very first day we are back in session, the Democratic leadership is breaking its agreement with the President. The Democratic leadership says they are not breaking their word. President Bush, on the other hand, says this new rule breaks the deal, and he will veto any bill which includes this new bigger spending provision.

Every House Republican who was part of the budget negotiations agree the Democratic leadership has broken the deal. For the working taxpayer, what is at stake is very clear. The Democratic new rule provides for higher spending. It will have Democrat-controlled staffs estimate new spending, and the result will be higher spending. That higher spending will lead to calls for higher taxes. Already there are a number of leading Democrats talking about a variety of tax increases.

Ironically, the budget deal was supposed to last for 5 years. It is being broken on the very first day the House is sworn in.

The Republican amendment is quite clear. Not only does it reestablish the deal that was made last fall, not only does it reestablish the control on spending, but it provides for a very clear date certain to bring up a balanced budget amendment. It is in fact a clear choice.

Now, every Member in this House went home and campaigned against more taxes, against spending in Washington, in favor of a balanced budget. In the next few minutes we are going to have a clear choice. Every Member is going to get to walk back in this room and vote, and vote one way or another. They are going to vote to break their word with the President, they are going to vote to break their word with the taxpayer, they are going to vote to have higher spending and ultimately higher taxes, or they are going to vote to send the signal to bring up a balanced budget amendment. They are going to vote to send the signal to keep their word with the President and the American people, and they are going to vote that they want to control spending.

It is a very clear choice, and I think everyone back home ought to look at those campaign speeches from last fall and they ought to look at this vote, because this vote is real. It is the vote that has real impact on the real pocketbook of every American.

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Mr. PENNY. Mr. Speaker, I worked as hard as any Member in this Congress to control spending. I was delighted last fall when the budget agreement included tough spending limitations and enforcement mechanisms. If I felt that the rule being proposed by the Democratic Caucus today would unravel the effect of that budget agreement, I would vote against it. But on the contrary, I think it will help us to adhere to and enforce that budget agreement.

We will still have the spending limitations for various categories of spending. We will still have a pay-as-you-go requirement. All of those important budget reforms will still apply.

The only question before us today is whether OMB or CBO will be the scorekeeper.

We have to ask ourselves several questions: does OMB have a better track record in terms of making budget estimates? I think the answer is no.

Does OMB use a more conservative set of economic assumptions? I think if you look at the record over the years, the answer to that question is also no.

Does OMB use a more conservative set of economic assumptions? I think if you look at the record over the years, the answer to that question is also no.

Does OMB have a tradition of nonpartisanship in the development of its budget number? I think again the answer is no.

If you are looking for objectivity in setting budget numbers, if you are looking for a timely response so that the work of Congress can proceed, I think the only reliable agency that we have been able to turn to over the years is the Congressional Budget Office. For that reason I feel that this rules change is an appropriate change. It will help us identify accurate numbers, objective numbers by which to measure our work. I think in so doing it will help us to enforce and implement, rather than undermine, the budget agreement reached last fall.

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Mr. GRADISON. . . .

Mr. Speaker, I rise in strong opposition to the rules proposed by the Democrats, but especially the provision that instructs the House to disregard the agreement just entered into with the administration by requiring the President to use congressional scorekeeping on all fiscal legislative measures.

The devious proposal is not only a violation of an agreement, it is a

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direct affront to the rule of law, in particular to a law of the land whose ink is barely dry.

Had the White House instructed the executive departments to disregard a key element of the budget agreement, the Democratic leadership in the congress would have gone ballistic. They would have urged editorial writers all over the country to object to the executive branch putting itself above the law. But what we see here today is the Democratic Party putting itself above the law.

Furthermore, the Democrats can hardly plead ignorance; it was, predominately, their votes that enacted this provision into law as part of the Omnibus Reconciliation Budget Act of 1990; it was their leaders who negotiated this provision which the majority leader now wants to change. The chairman of the Ways and Means Committee properly argues that the House should have CBO and Joint Tax Committee estimates before taking action on entitlement and tax changes. But he goes too far in arguing that OMB must be bound to follow these estimates in carrying out their sequestration responsibilities.

Mr. Speaker, this is not the way to begin a new Congress. This shameless, unilateral action by House Democrats will poison the waters and make it all but impossible for the House to work in a bipartisan manner to craft vital legislation that the American people need.

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Mr. McEWEN. . . .

Mr. Speaker, as I understand the budget package during the eruption that took place in October it was that when we came back from the summit, Mr. Sununu and Mr. Darman negotiating on behalf of the administration said that ladies and gentlemen, we had forced the gentleman to eat his lips, but we had reached an agreement that will be advantageous again in the future. That was that over the next 5 years we decided upon various spending categories, and whenever Congress overspends we have the authority to reduce spending in that same area so that we do not supersede these limits over the next 5 years.

Some of us over here, most of us over here looked at Mr. Sununu and said Mr. Sununu, they are not going to abide by it. Come March, come April, they are going to just jump out of it, and you are going to be stuck with new taxes, and they are going to increase the spending anyhow. And he said, "Oh, no, you don't understand. We had a big summit, and we argued about it, and we even fought a little, and decided that OMB should decide it, and they conceded and gave a little, and we gave up a little with the tax package." And the Speaker came down here in the well and pleaded with us to come together on a bipartisan basis, for the good of the country, and so by a vote of a very narrow margin we decided to do it.

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Some of us went back home and said, I said just a week ago to the chamber of commerce in Dayton, OH, that this thing would not last until March. I was wrong. It did not last through the first day.

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Mr. RHODES. Mr. Speaker, as one of those minority of the minority that voted for both the summit package and ultimately the Budget Reconciliation Act, I guess I am standing up here today to say thank you to the majority for teaching me a very valuable lesson. Those of us here on our side who did not support the reconciliation bill but who are protesting this rules change because it is a breaking of a word really ought to be coming to the well and saying to those of us who trusted, "We told you so." You did tell us so. You told us that, all the way along, taxes are permanent, and that spending limits will not last. You were right. We were wrong.

We trusted.

The point is not whether CBO can do a better job than OMB. The point is not whether or not you may have a better idea as to how to do the scorekeeping. The point is that you came to all of us and you said, "We have a sugar coating to the very bitter pill of taxation."

I caught unshirted hell at home for my vote on that reconciliation bill, and I was able to say, "Yes, there are taxes, but there are spending limitations."

It is too bad I was only half right.

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Mr. HENRY. . . .

All of the Orwellian excellence in the world cannot obscure the fact of what we are doing.

Most of the debate on the majority side has really not clarified the question, but, in fact, tried to obscure it.

The fact is that we are raping the budget agreement that was reached only 3 months ago. That is what it is.

You might tell us it is adultery because it involves consent adults. We are trying to tell you we are not consenting.

We are told that there were technical agreements that everyone understood were to be made later. That is what we were told. Here is the White House understanding. I read the President's message to the Speaker:

> This rule would change the new pay-as-you-go enforcement mechanism by overturning a specifically, specifically negotiated and agreed scoring provision. More important, if the

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proposed rule is adopted, the House of Representatives will have begun the 102nd Congress by undercutting the credibility of the entire budget agreement.

That is what we are doing, Mr. Speaker. Call it adultery. It is rape.

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Mrs. JOHNSON of Connecticut. . . .

Mr. Speaker, I rise in strong opposition to the substance of this proposal, and with deep concern for the subversion of the legislative process contained in this package.

The substance strikes at the heart of the budget agreement. The process strikes at the heart of democracy, and so I am going to use such time as I may consume, and I am not going to recognize the authority of the Speaker's gavel, because I want to make very clear the implications of what is happening here.

. . . .

. . . That is why this, today's debate, is happening. We are at a point where individual desires to spend on our own special interest programs are overriding the larger public interest in deficit reduction to which we as a Congress committed ourselves. Frankly, I feel personally compelled to demonstrate the consequences to democracy of the destruction of the moral principles that underl[ie] our form of government.

Just as my unwillingness to honor the rules-of-House debate creates havoc, so the majority party's unwillingness to adhere to a negotiated deal to which they gave their word, is deeply and fundamentally violative of the trust that is essential to democracy succeeding.

. . . .

Mr. PANETTA. Mr. Speaker, first of all, let me urge support for the rules. The majority party, Democrats, control the House, and were elected by the people of this Nation to control the House. We intend to operate under the rules that we propose for the House. These rules are fair. They are balanced. They are responsible. They provide for the orderly operation of the House. That is our responsibility. That is what we fulfill today.

Specifically, on the issue of OMB and CBO, relating to the scoring of pay-as-you-go legislation; for those Members who voted for the budget agreement, let me address my remarks to those who voted for the budget agreement. It is not the intent of the leadership to in any way undermine the budget agreement. The issue here is not whether or not we enforce the budget agreement. We will enforce the budget agreement. The issue is not whether or not we will have pay-as-you-go requirements. We will have pay-as-you-go requirements. Indeed, the issue is not whether or not there will be sequester. The fact is that CBO in its scoring could indeed produce sequester

(continued...)

[1269](...continued)
with regard to pay-as-you-go legislation. Those are not the issues here.

The issue here is one issue alone: Who will be the scorekeeper for the House of Representatives when it comes to pay-as-you-go legislation, moving through this committee? The official scorekeeper of the House of Representatives in the Congress is the Congressional Budget Office. It scores authorizing bills, it scores appropriation bills, it scores, with the help of the Joint Committee, tax bills. It scores whether or not we have fulfilled our goals under the budget resolution. Therefore, it is incumbent that CBO be our official scorer when it comes to pay-as-you-go legislation.

Now, I recognize the conflict that has been created by Gramm-Rudman with regards to OMB and the use of sequester, and indeed OMB has the authority when it looks at overall deficit numbers, to establish whether or not we have breached those overall deficit numbers. The issue under this agreement is individual pay-as-you-go bills, and the question is: Is OMB going to score for the committee and for the House? Are they going to be the principal scorekeeper, or is CBO going to be the principal scorekeeper?

Now, what is the problem with the Office of Management and Budget? There are several. First of all, it is a branch of the executive branch of government. It is part of the executive branch of government. It basically advocates policy on the part of the executive branch of government. CBO does not do that. Third, there have been differences in scoring in major areas. For example, with regard to the issue on taxation, the capital gains. There was a difference of almost $21 billion between OMB and CBO. When it came to Medicare, there was a difference of $7 billion. When it came to food stamp legislation, almost 336-percent difference between numbers recommended by CBO and numbers by OMB.

So those were the legitimate concerns that came up during the budget summit. A lot of people have talked here about the issue of what was agreed to or not agreed to in the budget summit. I was chairman of the task force on the budget process. This was a disputed issue because of the very concerns that I have raised. We tried and made an effort to resolve the effort. One proposal was to develop a cushion, to allow for a cushion so that if there were differences, we could try to cover them within a proposed cushion. That was objected to, not by the Democrats, but by the Republicans. We offered another proposal with regard to OMB offering some scorekeeping at the conference stage. The problem, very frankly, was that Members did not want to be in a position of having to negotiate with OMB throughout the committee process. That is a legitimate concern. So, in the last meeting of the budget summit in the Speaker's office, the decision was that what we need is a study by OMB and CBO to try and resolve their differences so that we can, in fact, have a legitimate score on the pay-as-you-go bills in which there is unity between OMB and CBO, as to those scores.

Now, with regard to the flexibility of the minority in administration. If they do not like what is being proposed in the bills, they could offer an amendment on the floor. It can be waived through the Committee on Rules.

(continued...)

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It can be negotiated in conference, and the President ultimately has the ability, as he has stated, to veto the bills. My urging here is that we request OMB and CBO to implement a study, to report back to the Congress on their differences. We will not pass any pay-as-you-go legislation until we complete the budgetary in any event. Therefore, please allow Members the time to complete that study, resolve these differences, so that we can focus on policy issues. That is where the debate ought to be.

. . . .

Mr. SOLOMON. Mr. Speaker, will the gentleman yield?

Mr. PANETTA. I am pleased to yield to the gentleman from New York.

Mr. SOLOMON. Mr. Speaker, I would say to the gentleman, who has come before the Committee on Rules many times, that I deeply admire and respect him, and I do. However, the argument today is about the President of the United States, who called me on the phone at 6:30 a.m. on a Friday morning and told me that the gentleman from California [Mr. PANETTA] and the Democratic leadership had agreed to have OMB as the relevant agency. That is why he agreed to the tax increase.

Mr. PANETTA. Mr. Speaker, with all due respect to the President of the United States, the President of the United States was not present in the summit meetings. The President of the United States was not present during negotiations during this issue. There were three representatives from the administration who were present who are involved in this disputed issue. At the time, I said to them that if we could not resolve it here, make no mistake about it, this will be a disputed issue if we cannot resolve it. We could not resolve it. We made an effort to do that.

This is a way, very frankly, of trying to force the issue, so that hopefully OMB and CBO can reduce their differences on scoring. That solely the issue does not have anything to do with the budget agreement or pay as you go, or nothing to do with the enforcement. I intend that the agreement is fully enforced. I want to have an objective a scorekeeper as possible, and I prefer CBO over OMB. It is that simple.

Mr. MCEWEN. Mr. Speaker, it says in the law that OMB would be the scorekeeper, and if that is established in the law, what is the purpose of this rule? Why the change, if it is not reneging upon an agreement? Why did we not proceed as we had proceeded before, except that it is a challenge?

Mr. PANETTA. The decision at the end of the final discussion on that was that indeed we would have a study by OMB and CBO to try to resolve their differences. That was the decision that we arrived at because these are great differences.

Now, to OMB's credit, they are trying to move toward more credible

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[1249] (...continued)
projections in terms of their costs.

I think all of us admit that OMB, whether it is a Democratic or a Republican administration, have played games with projections. They played games on economic projections. They played games on policy issues.

The CBO, on the other hand, remains the most objective scorekeeper for the House and the Senate. That is understood.

Mr. McEWEN. Mr. Speaker, I ask unanimous consent that the President's communication may be inserted in the RECORD at this point.

. . . .

The letter above referred to of December 21, 1990, from President Bush, is as follows:

THE WHITE HOUSE,
Washington, December 21, 1990.

Hon. THOMAS S. FOLEY,
Speaker of the House of Representatives,
Washington, DC.

DEAR MR. SPEAKER: I understand that the House Democratic Caucus has approved a rule for consideration by the House that would begin to undo the recently enacted Budget Agreement.

This rule would change the new pay-as-you-go enforcement mechanism by overturning a specifically negotiated and agreed scoring provision. More important, if the proposed rule is adopted, the House of Representatives will have begun the 102nd Congress by undercutting the credibility of the entire Budget Agreement. If specifically negotiated and agreed provisions are to be undone before the ink is dry, how can we expect the Agreement to be taken seriously? Where, one might reasonably ask, is the process of erosion to stop?

Abandonment of the Agreement would undermine hard-earned confidence in the U.S. Government's improved ability to control Federal spending. To undermine such confidence in the current economic circumstances seems to me to be particularly unwise.

In order to preserve the integrity of the Budget Agreement, I urge you to prevent the adoption of any rule that would violate our Agreement. And in order to preserve confidence in that Agreement, I must advise you that I will veto any bill that contains language such as that specified in the rule approved by the Democratic Caucus.

Sincerely,

GEORGE BUSH.

(continued...)

(e) EMERGENCY LEGISLATION. -- If, for fiscal year 1991, 1992, 1993, 1994, or 1995, a provision of direct spending[1250] or receipts legislation is enacted that the President designates as an emergency requirement and that the Congress so designates in statute, the amounts of new budget authority,[1251] outlays,[1252] and receipts in all fiscal years through 1995 resulting from that provision shall be designated as an emergency requirement in the reports required under subsection (d).[1253]

[1249] (...continued)

137 CONG. REC. H7-26 (Jan. 3, 1991). The House voted in favor of the previous question, 250 to 162 (18 not voting), voted down the Republican leader's motion to recommit 160 to 256 (14 not voting), and approved the resolution amending the rules 242 to 160 (28 not voting). *Id.* at H26-28.

[1250] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1251] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1252] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1253] Compare the parallel provisions for emergencies for appropriated spending in section 251(b)(2)(D). *See supra* p. 423. For a discussion of how Congress and the President might designate spending as emergency requirements, see *supra* note 1192 (at the end of the parallel provision in section 251(b)(2)(D)).

Section 13101(a) of the Budget Enforcement Act amended section 252 to read as it does now. *See infra* p. 617. The statement of managers accompanying the conference report on the Budget Enforcement Act explains section 252 generally:

> II. ENFORCING PAY-AS-YOU-GO
>
> *Current law*
>
> Under current law, the Senate and the House of Representatives limit entitlements through spending allocations to their respective authorizing committees in the joint statement of the managers accompanying the concurrent resolution on the budget, just as with discretionary spending. A point of order (requiring 60 votes to waive in the Senate and a simple majority to waive in the House) lies against any new entitlement program that would cause spending to exceed limits that flow from these allocations. Similarly, the concurrent resolution on the budget sets a revenue floor, and a point of order (requiring 60 votes to waive in the Senate and a simple majority to waive in

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[1253](...continued)
the House) lies against any tax-cutting legislation that would cause revenues to fall below the floor in the resolution.

House bill

The House bill creates a new "pay-as-you-go" mechanism to require across-the-board cuts in those entitlement programs subject to Gramm-Rudman-Hollings if new entitlement spending or tax-cutting legislation increases the deficit. The President orders these cuts on October 15 -- the same date that a final sequestration order is issued pursuant to Gramm-Rudman-Hollings. The House bill cuts the first $5 billion in excess solely from entitlement programs now covered by Gramm-Rudman-Hollings. In the case of any excess above $5 billion, the House would cut 50 percent of the further excess from entitlement and 50 percent from discretionary spending.

Senate amendment

The Senate amendment creates a mechanism similar to the House bill, except that the President orders these cuts on November 15, and makes the across-the-board cuts solely in entitlement programs now covered by Gramm-Rudman-Hollings. Discretionary programs would not be reduced through the pay-as-you-go sequester.

Conference agreement

The conference agreement makes across-the-board cuts only in non-exempt entitlement programs, as in the Senate amendment. These cuts are ordered on the same day as the discretionary spending and deficit sequestrations. The conference agreement includes a provision for emergency direct spending or receipts legislation, which would not be subject to the pay-as-you-do requirement.

Section 252(b)(1) of the conference agreement excludes from the pay-as-you-go sequester procedure legislation maintaining the deposit insurance guarantee in effect on the date of enactment. The conferees intend that the funding to meet deposit insurance liabilities that meet existing commitments be exempt from any pay-as-you-go sequestration.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,153-54 (1990).

SEC. 253. ENFORCING DEFICIT TARGETS.[1254]

(a) SEQUESTRATION.[1255] -- Within 15 calendar days after Congress adjourns[1256] to end a session (other than of the One Hundred First Congress) and on the same day as a sequestration (if any) under section 251 and section 252, but after any sequestration required by section 251 (enforcing discretionary spending limits[1257]) or section 252 (enforcing pay-as-you-go), there shall be a sequestration to eliminate the excess deficit[1258] (if any remains) if it exceeds the margin.

(b) EXCESS DEFICIT; MARGIN. -- The excess deficit is, if greater than zero, the estimated deficit[1259] for the budget year,[1260] minus --

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[1254] Section 13101(a) of the Budget Enforcement Act amended section 253 to read as it does now. *See infra* p. 617. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act explaining section 253, see *infra* note 1309.

[1255] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1256] What happens if the Congress recesses to end the first session of a Congress? Congress plainly intended to require annual review of legislation. This language should be read as "adjourns or recesses to end a session."

[1257] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1258] Section 253(b) defines the term "excess deficit." *See infra* pp. 457-458.

[1259] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

As used here, the deficit means the deficit left after any savings achieved for the fiscal year by sections 251 and 252. This conclusions flows from the language of subsection (a) stating that sequestration under this section shall occur "*after* any sequestration required by section 251 (enforcing discretionary spending limits) or section 252 (enforcing pay-as-you-go)" and that there shall be sequestration of the excess deficit "if any *remains*" (emphasis added).

[1260] Section 250(c)(12) defines "budget year." *See supra* p. 377.

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(1) the maximum deficit amount[1261] for that year;

(2) the amounts for that year designated as emergency direct spending[1262] or receipts legislation under section 252(e); and

(3) for any fiscal year in which there is not a full adjustment for technical and economic reestimates, the deposit insurance[1263] reestimate for that year, if any, calculated under subsection (h).

The "margin" for fiscal year 1992 or 1993 is zero and for fiscal year 1994 or 1995 is $15,000,000,000.

(c) DIVIDING THE SEQUESTRATION.[1264] -- To eliminate the excess deficit[1265] in a budget year,[1266] half of the required outlay[1267] reductions shall be obtained from non-exempt defense accounts[1268] (accounts designated as function 050 in the President's fiscal year 1991 budget submission) and half from non-exempt, non-defense accounts (all other non-exempt accounts).

[1261] Section 250(c)(1) (*see supra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See infra* pp. 403-429, 457-473.

[1262] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1263] Section 250(c)(19) defines "deposit insurance." *See supra* p. 378.

[1264] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1265] Section 253(b) defines the term "excess deficit." *See supra* pp. 457-458.

[1266] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1267] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1268] Section 250(c)(11) defines "account." *See supra* p. 377.

(d) DEFENSE. -- Each non-exempt defense account[1269] shall be reduced by a dollar amount calculated by multiplying the level of sequestrable budgetary resources[1270] in that account at that time by the uniform percentage necessary to carry out subsection (c), except that, if any military personnel are exempt, adjustments shall be made under the procedure set forth in section 251(a)(3).

(e) NON-DEFENSE. -- Actions to reduce non-defense accounts[1271] shall be taken in the following order:

(1) FIRST. -- All reductions in automatic spending increases under section 256(a) shall be made.

(2) SECOND. -- If additional reductions in non-defense accounts[1272] are required to be made, the maximum reduction permissible under sections 256(b) (guaranteed student loans) and 256(c) (foster care and adoption assistance) shall be made.

(3) THIRD. -- (A) If additional reductions in non-defense accounts[1273] are required to be made, each remaining non-exempt, non-defense account shall be reduced by the uniform percentage necessary to make the reductions in non-defense outlays[1274] required by subsection (c), except that --

(i) the medicare program specified in section

[1269] Section 250(c)(11) defines "account." *See supra* p. 377.

[1270] Section 250(c)(6) defines "budgetary resources." *See supra* p. 375.

[1271] Section 250(c)(11) defines "account." *See supra* p. 377.

[1272] Section 250(c)(11) defines "account." *See supra* p. 377.

[1273] Section 250(c)(11) defines "account." *See supra* p. 377.

[1274] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

256(d) shall not be reduced by more than 2 percent in total including any reduction of less than 2 percent made under section 252 or, if it has been reduced by 2 percent or more under section 252, it may not be further reduced under this section; and

(ii) the health programs set forth in section 256(e) shall not be reduced by more than 2 percent in total (including any reduction made under section 251),

and the uniform percent applicable to all other programs under this subsection shall be increased (if necessary) to a level sufficient to achieve the required reduction in non-defense outlays.[1275]

(B) For purposes of determining reductions under subparagraph (A), outlay[1276] reduction (as a result of sequestration[1277] of Commodity Credit Corporation commodity price support contracts in the fiscal year of a sequestration) that would occur in the following fiscal year shall be credited as outlay reductions in the fiscal year of the sequestration.

(f) BASELINE[1278] ASSUMPTIONS; PART-YEAR APPROPRIATIONS. --

(1) BUDGET ASSUMPTIONS. -- For purposes of subsections (b), (c), (d), and (e), accounts[1279] shall be assumed to

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[1275] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1276] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1277] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1278] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

[1279] Section 250(c)(11) defines "account." *See supra* p. 377.

be at the level in the baseline[1280] minus any reductions required to be made under sections 251 and 252.

(2) PART-YEAR APPROPRIATIONS. -- If, on the date specified in subsection (a), there is in effect an Act making or continuing appropriations for part of a fiscal year for any non-exempt budget account,[1281] then the dollar sequestration[1282] calculated for that account under subsection (d) or (e), as applicable, shall be subtracted from --

(A) the annualized amount otherwise available by law in that account under that or a subsequent part-year appropriation; and

(B) when a full-year appropriation for that account[1283] is enacted, from the amount otherwise provided by the full-year appropriation; except that the amount to be sequestered[1284] from that account shall be reduced (but not below zero) by the savings achieved by that appropriation when the enacted amount is less than the baseline[1285] for that account.

(g) ADJUSTMENTS TO MAXIMUM DEFICIT AMOUNTS.[1286] --

[1280] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

[1281] Section 250(c)(11) defines "account." *See supra* p. 377.

[1282] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1283] Section 250(c)(11) defines "account." *See supra* p. 377.

[1284] Section 250(c)(2) defines "sequester." *See supra* p. 372.

[1285] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

[1286] Section 250(c)(1) (*see supra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

(continued...)

(1) ADJUSTMENTS. --

(A) When the President submits the budget for fiscal year 1992, the maximum deficit amounts for fiscal years 1992, 1993, 1994, and 1995 shall be adjusted to reflect up-to-date reestimates of economic and technical assumptions and any changes in concepts or definitions. When the President submits the budget for fiscal year 1993, the maximum deficit amounts for fiscal years 1993, 1994, and 1995 shall be further adjusted to reflect up-to-date reestimates of economic and technical assumptions and any changes in concepts or definitions.

(B) When submitting the budget for fiscal year 1994, the President may choose to adjust the maximum deficit amounts[1287] for fiscal years 1994 and 1995 to reflect up-to-date reestimates of economic and technical assumptions. If the President chooses to adjust the maximum deficit amount when submitting the fiscal year 1994 budget, the President may choose to invoke the same adjustment procedure when submitting the budget for fiscal year 1995. In

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[1286] (...continued)

Because this subsection provides that the President must adjust the deficit targets annually through fiscal year 1993, the deficit target sequester under this section should not come into effect before fiscal year 1994, if then. This is so because once the President makes the adjustments for changes in economic and technical assumptions, the only deficit reduction that the law will require (with one possible exception) will be that needed to enforce the discretionary spending caps and the pay-as-you-go regime. The one (highly unlikely) possible exception would come about if the Congress and the President enacted changes in law that increased direct spending or cut taxes without offset by more than the approximately $28 billion in mandatory programs subject to sequestration under section 252. In that case, after making the exhaustive cuts that section 252 would then require, section 253 would require the President to achieve the additional deficit reduction necessary from appropriated accounts.

[1287] Section 250(c)(1) (*see supra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

each case, the President must choose between making no adjustment or the full adjustment described in paragraph (2). If the President chooses to make that full adjustment, then those procedures for adjusting discretionary spending limits[1288] described in sections 251(b)(1)(C) and 251(b)(2)(E), otherwise applicable through fiscal year 1993 or 1994 (as the case may be), shall be deemed to apply for fiscal year 1994 (and 1995 if applicable).

(C) When the budget for fiscal year 1994 or 1995 is submitted and the sequestration[1289] reports for those years under section 254 are made (as applicable), if the President does not choose to make the adjustments set forth in subparagraph (B), the maximum deficit amount[1290] for that fiscal year shall be adjusted by the amount of the adjustment to discretionary spending limits[1291] first applicable for that year (if any) under section 251(b).

(D) For each fiscal year the adjustments required to be made with the submission of the President's budget for that year shall also be made

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[1288] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1289] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1290] Section 250(c)(1) (*see supra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1291] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

when OMB[1292] submits the sequestration[1293] update report and the final sequestration report for that year, but OMB shall continue to use the economic and technical assumptions in the President's budget for that year.

Each adjustment shall be made by increasing or decreasing the maximum deficit amounts[1294] set forth in section 601 of the Congressional Budget Act of 1974.

(2) CALCULATIONS OF ADJUSTMENTS. -- The required increase or decrease shall be calculated as follows:

(A) The baseline[1295] deficit[1296] or surplus shall be calculated using up-to-date economic and technical assumptions, using up-to-date concepts and definitions, and, in lieu of the baseline levels of discretionary appropriations,[1297] using the discretionary spending limits[1298] set forth in section 601 of the Congressional Budget Act of 1974 as adjusted under section 251.

[1292] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1293] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1294] Section 250(c)(1) (*see supra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1295] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

[1296] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1297] Section 250(c)(7) defines "discretionary appropriations." *See supra* p. 375.

[1298] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

(B) The net deficit[1299] increase or decrease caused by all direct spending[1300] and receipts legislation enacted after the date of enactment of this section (after adjusting for any sequestration[1301] of direct spending accounts[1302]) shall be calculated for each fiscal year by adding --

(i) the estimates of direct spending and receipts legislation transmitted under section 252(d) applicable to each such fiscal year; and

(ii) the estimated amount of savings in direct spending programs applicable to each such fiscal year resulting from the prior year's sequestration[1303] under this section or section 252 of direct spending,[1304] if any, as contained in OMB's[1305] final sequestration report for that year.

(C) The amount calculated under subparagraph (B) shall be subtracted from the amount calculated under subparagraph (A).

[1299] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1300] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1301] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1302] Section 250(c)(11) defines "account." *See supra* p. 377.

[1303] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1304] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1305] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

(D) The maximum deficit amount[1306] set forth in section 601 of the Congressional Budget Act of 1974 shall be subtracted from the amount calculated under subparagraph (C).

(E) The amount calculated under subparagraph (D) shall be the amount of the adjustment required by paragraph (1).

(h) TREATMENT OF DEPOSIT INSURANCE.[1307] --

(1) INITIAL ESTIMATES. -- The initial estimates of the net costs of federal deposit insurance for fiscal year 1994 and fiscal year 1995 (assuming full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of the submission of the budget for fiscal year 1993) shall be set forth in that budget.

(2) REESTIMATES. -- For fiscal year 1994 and fiscal year 1995, the amount of the reestimate of deposit insurance costs shall be calculated by subtracting the amount set forth under paragraph (1) for that year from the current[1308] estimate of deposit insurance costs (but assuming full funding of, and continuation of, the deposit insurance guarantee commitment in effect on the date of submission of the budget for fiscal year 1993).[1309]

[1306] Section 250(c)(1) (*see supra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1307] Section 250(c)(19) defines "deposit insurance." *See supra* p. 378.

[1308] Section 250(c)(9) defines "current." *See supra* p. 376.

[1309] Section 13101(a) of the Budget Enforcement Act amended section 253 to read as it does now. *See infra* p. 617. The statement of managers accompanying the conference report on the Budget Enforcement Act explains section 253 generally:

(continued...)

[1309](...continued)

III. REVISING AND ENFORCING DEFICIT TARGETS

Current law

Gramm-Rudman-Hollings established deficit targets ("maximum deficit amounts") in 1985 and the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 revised them as follows (in billions of dollars):

	1985 law	1987 revision
Fiscal year:		
1986	171.9	
1987	144	
1988	108	144
1989	72	136
1990	36	100
1991	0	64
1992		28
1993		0

Gramm-Rudman-Hollings enforces these targets, based on projections of the deficit, through across-the-board cuts on October 15. The cuts cancel non-exempt budgetary resources to achieve outlay savings sufficient to reduce the deficit to the maximum deficit amount. Under section 301(i) of the Congressional Budget Act, budget resolutions must also meet these maximum deficit amount targets or be subject to a point of order (that requires 60 votes to waive in the Senate and a three-fifths majority to waive in the House). Gramm-Rudman-Hollings expires on September 30, 1993. For a discussion of current law, see the conference report to accompany H.J. Res. 324 (Increasing the Statutory Limit on the Public Dept), House Report 100-313 (September 21, 1987), 100th Cong. 1st Sess., pages 42-62.

House bill

The House bill revises the deficit targets as follows (in billions of dollars):

(continued...)

[1309] (...continued)

	Current law	House bill
Fiscal year:		
1986	171.9	
1987	144	
1988	144	
1989	136	
1990	100	
1991	64	302.3
1992	28	276.8
1993	0	189.7
1994		58.1
1995		18.7

The House bill amends Gramm-Rudman-Hollings to provide for sequestration in a manner similar to current law, except that for fiscal years 1991 through 1993 the President must annually revise the targets for changes in economic and technical assumptions occurring since the last year. As a consequence, during those years, the sequester covers only changes caused by legislative actions. The consequences of those actions, however, are addressed by the new mechanisms for enforcement of the discretionary spending limits and pay-as-you-go. Thus, during the first three years covered by the House bill, this should not require the President to order cuts under the conventional Gramm-Rudman-Hollings process. For fiscal years 1994 and 1995, the House bill authorizes (but does not require) the President to continue the process of adjustment for economic and technical changes, but continues a process similar to the current Gramm-Rudman-Hollings for those years if the President chooses not to make such adjustments

Senate amendment

The Senate amendment revises the deficit targets as follows (in billions of dollars):

(continued...)

[1309](...continued)

	Current law	Senate amendment
Fiscal year:		
1986	171.9	
1987	144	
1988	144	
1989	136	
1990	100	
1991	64	242
1992	28	219
1993	0	165
1994		86
1995		62

The Senate amendment retains much of the language of the existing Gramm-Rudman-Hollings, but adopts a process similar to the House bill for annual adjustment of the deficit targets.

The revised deficit targets proposed by the Senate differ from those proposed by the House because of differences in economic and technical assumptions.

Conference agreement

The conference agreement revises the deficit targets (as a new section of the Congressional Budget Act of 1974) as follows (in billions of dollars):

	Current law	House bill
Fiscal year:		
1986	171.9	
1987	144	
1988	144	
1989	136	
1990	100	
1991	64	327
1992	28	317
1993	0	236
1994		102
1995		83

The conference agreement incorporates the procedures proposed by the House under which the President must adjust the deficit targets for

(continued...)

[1309](...continued)

> fiscal years 1991 through 1993 and may adjust the target for fiscal years 1994 and 1995. The deficit targets established reflect current economic projections and the removal of Social Security trust fund balances from the deficit calculation. These deficit targets will be adjusted for further updated economic and technical factors through fiscal year 1993.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,155-56 (1990).

The joint statement of managers accompanying the conference report on the 1987 revision of Gramm-Rudman-Hollings explained the deficit-reduction procedures in effect before the Budget Enforcement Act and the changes made in 1987. *Note that the Budget Enforcement Act changed these procedures significantly:*

> III. DEFICIT REDUCTION PROCEDURES AND BUDGET PROCESS REFORM
>
> OVERVIEW
>
> The Balanced Budget and Emergency Deficit Control Act of 1985 (Public Law 99-177), commonly referred to as the 1985 Balanced Budget Act or the Gramm-Rudman-Hollings Act, established deficit targets (leading to a balanced budget by fiscal year 1991) and a special deficit-reduction process known as sequestration. Additionally, the Act made extensive changes in congressional procedures under the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93-344).
>
> H.J. Res. 324, as passed by the House, does not contain any provisions dealing with deficit reduction procedures or budget process reform.
>
> Senate amendment numbered 3 adds two new titles to the joint resolution that modify the deficit targets and sequestration process under the 1985 Balanced Budget Act . . . .
>
> . . . .
>
> The following discussion explains current law, the Senate amendment, and the conference agreement in more detail, according to specific topics.
>
> A. DEFICIT REDUCTION PROCEDURES UNDER THE 1985 BALANCED BUDGET ACT
>
> H.J. Res. 324, as passed by the House, does not contain any provisions dealing with the 1985 Balanced Budget Act. Senate amendment numbered 3 in part adds a new Title II (Budget and Fiscal Procedures) to the joint resolution; Part A of Title II contains the "Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987." The conference agreement adds a new Title I (Deficit Reduction Procedures).

(continued...)

[1309] (...continued)

1. Deficit Targets and Amount of Sequestration

Current Law

The 1985 Balanced Budget Act established (in Section 3(7) of the 1974 Budget Act) a deficit target, referred to as a "maximum deficit amount," for each of six consecutive fiscal years, beginning with $171.9 billion for FY 1986, $144 billion for FY 1987, and declining by $36 billion a year thereafter until a balanced budget is achieved in FY 1991. The deficit targets are as follows:

FY 1986 -- $171.9 billion;
FY 1987 -- $144 billion;
FY 1988 -- $108 billion;
FY 1989 -- $72 billion;
FY 1990 -- $36 billion; and
FY 1991 -- zero.

The Act contains emergency procedures, known generally as sequestration, to eliminate the deficit excess -- that amount of the estimated deficit that exceeds the deficit target. Sequestration involves the issuance of a presidential order that permanently cancels (with certain exceptions) budgetary resources in order to achieve a required amount of outlay savings. If sequestration is required for a fiscal year, the entire amount of the deficit excess for that year must be eliminated. (To eliminate a deficit excess of $20 billion, for example, budgetary resources would have to be reduced by a much greater amount in order to yield the $20 billion in aggregate required outlay reductions).

Sequestration would not occur during FY 1987-1990 if the deficit excess is $10 billion or less. (The $10 billion margin-of-error amount does not apply for FY 1991; in that year, any deficit excess would have to be eliminated.)

Provisions in the 1985 Balanced Budget Act pertaining to the deficit targets and sequestration procedures expire on September 30, 1991.

. . . .

Senate Amendment

The Senate amendment revises the deficit targets beginning with FY 1988 and extends them for one year, as follows:

FY 1988 -- $150 billion;
FY 1989 -- $130 billion;
FY 1990 -- $90 billion;
FY 1991 -- $45 billion; and
FY 1992 -- zero.

(continued...)

[1309](...continued)

Under the Senate amendment, if sequestration is required, the entire amount of the deficit excess must be eliminated (except possibly for FY 1989). Also, the $10 billion margin-of-error amount applies for FY 1988-1991, but not for FY 1992.

In the case of FY 1989 only, the amount of required outlay reductions is the lesser of (1) the amount of the deficit excess or (2) the amount necessary to achieve a $36 billion reduction from a current services baseline deficit. With regard to the second condition, sequestration would not occur if a report issued by the Director of the Office of Management and Budget (OMB) indicates that $36 billion in deficit reduction has been achieved. This final OMB report is issued after preliminary reports are made by the OMB Director, the Director of the Congressional Budget Office (CBO), and the Comptroller General.

To determine whether the second condition has been met, each agency estimates the amount of deficit reduction achieved below its own current services baseline deficit estimate made earlier in the year. (Current services is defined as zero percent real growth for all programs subject to appropriation.) OMB must use a baseline estimate (and corresponding economic and technical assumptions) that it is required to submit as part of the President's annual budget in January. CBO must use a baseline deficit estimate and assumptions that it is required to include in its annual February report. After reviewing the OMB and CBO estimates, the Comptroller General must issue on March 1 his own estimate of the FY 1989 baseline deficit and corresponding assumptions.

The Senate amendment changes the expiration date for provisions dealing with the deficit targets and sequestration procedures to September 30, 1992.

. . . .

Conference Agreement

The conference agreement revises the deficit targets beginning with FY 1988 and extends them for two years, as follows:

FY 1988 -- $144 billion;
FY 1989 -- $136 billion;
FY 1990 -- $100 billion;
FY 1991 -- $64 billion;
FY 1992 -- $28 billion; and
FY 1993 -- zero.

Under the conference agreement, if sequestration is required, the entire amount of the deficit excess must be eliminated (except for FY 1988 and possibly for FY 1989). Also, the $10 billion margin-of-error amount, defined as the "margin," is set at $10 billion for FY 1988-1992 and zero for FY 1993.

(continued...)

[1309](...continued)

For FY 1988 only, the conference agreement provides that the aggregate required outlay reductions to be accomplished through sequestration shall be the amount of unachieved deficit reduction for the fiscal year. Unachieved deficit reduction for FY 1988 is set at $23 billion, minus the net deficit reduction achieved (because of laws enacted or regulations promulgated as final) between January 1, 1987 and the appropriate "snapshot date" (in the case of the initial sequestration report, October 10, 1987, and in the case of the final sequestration report, the latest date possible before its submission on November 15, 1987 by the CBO Director and on November 20, 1987 by the OMB Director).

For FY 1989 only, the conference agreement provides that the aggregate required outlay reductions to be accomplished through sequestration shall be the lesser of the deficit excess or the amount of unachieved deficit reduction for the fiscal year (or zero if the deficit excess is equal to or less than the margin for that year--$10 billion). Unachieved deficit reduction for FY 1989 is set at $36 billion, minus the net deficit reduction achieved (because of laws enacted or regulations promulgated as final) between January 1, 1988 and the appropriate "snapshot date" (in the case of the initial sequestration report, August 15, 1988, and in the case of the final sequestration report, the latest date possible before its submission on October 10, 1988 by the CBO Director and on October 15 by the OMB Director).

The conferees recognize that the "snapshot date" may be different for the final OMB and CBO reports and therefore some legislation and regulations reflected in one report may not be reflected in the other. The OMB and CBO Directors shall ensure that the revised sequestration reports reflect legislation enacted or regulations promulgated as final as of three days prior to the issuance of such reports. In addition, the Directors shall ensure to the maximum extent practicable that the revised reports reflect legislation enacted or regulations promulgated as final during the three days immediately prior to the issuance of such reports.

The conference agreement caps the maximum amount of aggregate required outlay reductions at $23 billion for FY 1988 and $36 billion for FY 1989, but such amounts are not capped for the remaining fiscal years. The OMB and CBO Directors would determine the amount of net deficit reduction achieved for a fiscal year using the methodology and guidelines for making baseline estimates prescribed in Section 251(a)(6) of the 1985 Balanced Budget Act, as amended by this Act.

For the remaining fiscal years, FY 1990-1993, the aggregate required outlay reductions to be accomplished through sequestration would be equal to the amount of the deficit excess (or zero if the deficit excess is equal to or less than the margin for that year -- $10 billion for FY 1990-1992 and zero for FY 1993).

H.R. REP. NO. 100-313, 100th Cong., 1st Sess. 42-46 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 739, 743-46.

SEC. 254. REPORTS AND ORDERS.[1310]

(a)[1311] TIMETABLE. -- The timetable with respect to this part for any budget year[1312] is as follows:

Date:	**Action to be completed:**
January 21	**Notification regarding optional adjustment of maximum deficit amount.[1313]**
5 days before the President's budget submission	**CBO[1314] sequestration[1315] preview report.**
The President's budget submission	**OMB[1316] sequestration preview**

[1310] Section 13101(a) of the Budget Enforcement Act amended section 254 to read as it does now. *See infra* p. 617. For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act explaining section 254, see *infra* note 1412.

[1311] Before enactment of the Budget Enforcement Act, section 254(a) dealt with special procedures in the event of low economic growth. Section 13101(a) of the Budget Enforcement Act repealed the old section 254(a). *See infra* p. 617. Section 13101(f) of the Budget Enforcement Act (*see infra* p. 621) added a new section 258 to Gramm-Rudman-Hollings (*see infra* pp. 543-556) based on the old section 254(a) to deal with special procedures in the vent of low economic growth. For the text of the old section 254(a), see *infra* note 1579.

[1312] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1313] Section 250(c)(1) (*see supra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See supra* pp. 403-429, 457-473.

[1314] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1315] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1316] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

	report.
August 10	**Notification regarding military personnel.**
August 15	**CBO sequestration update report.**
August 20	**OMB sequestration update report.**
10 days after end of session	**CBO final sequestration report.**
15 days after end of session	**OMB final sequestration report; Presidential order.**
30 days later	**GAO compliance report.**

(b)[1317] Submission and Availability of Reports. -- Each report required by this section shall be submitted, in the case of CBO,[1318] to the House of Representatives, the Senate and OMB[1319] and, in the case of OMB, to the House of Representatives, the Senate, and the President on the day it is issued. On the following day a notice of the report shall be printed in the Federal Register.

(c) Optional Adjustment of Maximum Deficit Amounts.[1320] -- With respect to budget year[1321] 1994 or 1995, on the date specified in subsection (a) the President shall notify

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[1317] Before enactment of the Budget Enforcement Act, section 254(b) dealt with special fast-track reconciliation procedures in the Senate to respond to sequester orders. Section 13101(a) of the Budget Enforcement Act repealed the old section 254(b). *See infra* p. 617. Section 13101(g) of the Budget Enforcement Act (*see infra* p. 621) added a new section 258C to Gramm-Rudman-Hollings (*see infra* pp. 579-582) based on the old section 254(b) to deal with special fast-track reconciliation procedures in the Senate to respond to sequester orders. For the text of the old section 254(b), see *infra* note 1613.

[1318] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1319] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1320] Section 250(c)(1) (*see supra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See supra* pp. 403-429, 457-473.

[1321] Section 250(c)(12) defines "budget year." *See supra* p. 377.

the House of Representatives and the Senate of his decision regarding the optional adjustment of the maximum deficit amount (as allowed under section 253(g)(1)(B)).

(d) SEQUESTRATION[1322] PREVIEW REPORTS. --

(1) REPORTING REQUIREMENT. -- On the dates specified in subsection (a), OMB[1323] and CBO[1324] shall issue a preview report regarding discretionary, pay-as-you-go, and deficit sequestration[1325] based on laws enacted through those dates.

(2) DISCRETIONARY SEQUESTRATION[1326] REPORT. -- The preview reports shall set forth estimates for the current year[1327] and each subsequent year through 1995 of the applicable discretionary spending limits[1328] for each category[1329] and an explanation of any adjustments in such limits under section 251.

(3) PAY-AS-YOU-GO SEQUESTRATION[1330] REPORTS. -- The

[1322] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1323] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1324] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1325] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1326] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1327] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1328] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See* pp. 403-429, 457-473.

[1329] Section 250(c)(4) defines "category." *See supra* p. 373.

[1330] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

preview reports shall set forth, for the current year[1331] and the budget year,[1332] estimates for each of the following:

(A) The amount of net deficit[1333] increase or decrease, if any, calculated under subsection 252(b).

(B) A list identifying each law enacted and sequestration[1334] implemented after the date of enactment of this section included in the calculation of the amount of deficit[1335] increase or decrease and specifying the budgetary effect of each such law.

(C) The sequestration[1336] percentage or (if the required sequestration percentage is greater than the maximum allowable percentage for medicare) percentages necessary to eliminate a deficit[1337] increase under section 252(c).

(4) DEFICIT SEQUESTRATION[1338] REPORTS. -- The preview reports shall set forth for the budget year[1339] estimates for each of the following:

[1331] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1332] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1333] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1334] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1335] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1336] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1337] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1338] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1339] Section 250(c)(12) defines "budget year." *See supra* p. 377.

(A) The maximum deficit amount,[1340] the estimated deficit[1341] calculated under section 253(b), the excess deficit,[1342] and the margin.

(B) The amount of reductions required under section 252, the excess deficit[1343] remaining after those reductions have been made, and the amount of reductions required from defense accounts[1344] and the reductions required from non-defense accounts.

(C) The sequestration[1345] percentage necessary to achieve the required reduction in defense accounts[1346] under section 253(d).

(D) The reductions required under sections 253(e)(1) and 253(e)(2).

(E) The sequestration[1347] percentage necessary to achieve the required reduction in non-defense accounts[1348] under section 253(e)(3).

[1340] Section 250(c)(1) (*see supra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See supra* pp. 403-429, 457-473.

[1341] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1342] Section 253(b) defines the term "excess deficit." *See supra* pp. 457-458.

[1343] Section 253(b) defines the term "excess deficit." *See supra* pp. 457-458.

[1344] Section 250(c)(11) defines "account." *See supra* p. 377.

[1345] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1346] Section 250(c)(11) defines "account." *See supra* p. 377.

[1347] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1348] Section 250(c)(11) defines "account." *See supra* p. 377.

The CBO[1349] report need not set forth the items other than the maximum deficit amount[1350] for fiscal year 1992, 1993, or any fiscal year for which the President notifies the House of Representatives and the Senate that he will adjust the maximum deficit amount under the option under section 253(g)(1)(B).

(5) EXPLANATION OF DIFFERENCES. -- The OMB[1351] reports shall explain the differences between OMB and CBO[1352] estimates for each item set forth in this subsection.

(e) NOTIFICATION REGARDING MILITARY PERSONNEL. -- On or before the date specified in subsection (a), the President shall notify the Congress of the manner in which he intends to exercise flexibility with respect to military personnel accounts[1353] under section 255(h).[1354]

[1349] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1350] Section 250(c)(1) (*see supra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See supra* pp. 403-429, 457-473.

[1351] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1352] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1353] Section 250(c)(11) defines "account." *See supra* p. 377.

[1354] *See infra* p. 506. This reference refers to the section 255(h) at the end of section 255, dealing with "OPTIONAL EXEMPTION OF MILITARY PERSONNEL," not the section 255(h) that preexisted the Budget Enforcement Act, dealing with "LOW-INCOME PROGRAMS." *See infra* p. 506. Section 13101(c)(4) of the Budget Enforcement Act added the subsection (h) dealing with "OPTIONAL EXEMPTION OF MILITARY PERSONNEL" "at the end" of section 255. *See infra* p. 618. As section 13101(c)(4) of the Budget Enforcement Act simply added the new subsection (h) at the end of section 255 and did not amend the existing subsection (h) to read as the new subsection (h), Congress evidently wanted to add another subsection and not to repeal the existing subsection (h). As subsections (h) and (i) already existed, however, the Budget Enforcement Act should have added a new subsection (j) at the end of section 255, or perhaps have inserted the new subsection (h) in place of the existing subsection (f), which at least some drafters of the Budget

(continued...)

(f) SEQUESTRATION[1355] UPDATE REPORTS. -- On the dates specified in subsection (a), OMB[1356] and CBO[1357] shall issue a sequestration update report, reflecting laws enacted through those dates, containing all of the information required in the sequestration preview reports.

(g) FINAL SEQUESTRATION[1358] REPORTS. --

(1) REPORTING REQUIREMENT. -- On the dates specified in subsection (a), OMB[1359] and CBO[1360] shall issue a final sequestration[1361] report, updated to reflect laws enacted through those dates.

(2) DISCRETIONARY SEQUESTRATION[1362] REPORTS. -- The final reports shall set forth estimates for each of the following:

(A) For the current year[1363] and each subse-

[1354](...continued)
Enforcement Act intended to repeal. The reference here then should have been to subsection (j) or subsection (f), as the case may have been.

[1355] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1356] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1357] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1358] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1359] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1360] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1361] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1362] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1363] Section 250(c)(13) defines "current year." *See supra* p. 377.

quent year through 1995 the applicable discretionary spending limits[1364] for each category[1365] and an explanation of any adjustments in such limits under section 251.

(B) For the current year[1366] and the budget year[1367] the estimated new budget authority[1368] and outlays[1369] for each category[1370] and the breach,[1371] if any, in each category.

(C) For each category[1372] for which a sequestration[1373] is required, the sequestration percentages necessary to achieve the required reduction.

(D) For the budget year,[1374] for each account[1375]

[1364] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "discretionary spending limit" by adopting the definition of section 601(a)(2) of the Congressional Budget Act (*see supra* pp. 254-256) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See supra* pp. 403-429, 457-473.

[1365] Section 250(c)(4) defines "category." *See supra* p. 373.

[1366] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1367] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1368] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1369] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1370] Section 250(c)(4) defines "category." *See supra* p. 373.

[1371] Section 250(c)(3) defines "breach." *See supra* p. 373.

[1372] Section 250(c)(4) defines "category." *See supra* p. 373.

[1373] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1374] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1375] Section 250(c)(11) defines "account." *See supra* p. 377.

to be sequestered,[1376] estimates of the baseline[1377] level of sequestrable budgetary resources[1378] and resulting outlays[1379] and the amount of budgetary resources to be sequestered and resulting outlay reductions.

(3) PAY-AS-YOU-GO AND DEFICIT SEQUESTRATION[1380] REPORTS. -- The final reports shall contain all the information required in the pay-as-you-go and deficit sequestration preview reports. In addition, these reports shall contain, for the budget year,[1381] for each account[1382] to be sequestered,[1383] estimates of the baseline[1384] level of sequestrable budgetary resources[1385] and resulting outlays[1386] and the amount of budgetary resources to be sequestered and resulting outlay reductions. The reports shall also contain estimates of the effects on outlays of the sequestration in each outyear[1387] through 1995 for direct spending[1388] pro-

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[1376] Section 250(c)(2) defines "sequester." *See supra* p. 372.

[1377] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

[1378] Section 250(c)(6) defines "budgetary resources." *See supra* p. 375.

[1379] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1380] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1381] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1382] Section 250(c)(11) defines "account." *See supra* p. 377.

[1383] Section 250(c)(2) defines "sequester." *See supra* p. 372.

[1384] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. *See infra* pp. 529-541.

[1385] Section 250(c)(6) defines "budgetary resources." *See supra* p. 375.

[1386] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1387] Section 250(c)(14) defines "outyear." *See supra* p. 377.

[1388] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

grams.

(4) EXPLANATION OF DIFFERENCES. -- The OMB[1389] report shall explain any differences between OMB and CBO[1390] estimates of the amount of any net deficit[1391] change calculated under subsection 252(b), any excess deficit,[1392] any breach,[1393] and any required sequestration[1394] percentage. The OMB report shall also explain differences in the amount of sequesterable resources for any budget account[1395] to be reduced if such difference is greater than $5,000,000.

(5) PRESIDENTIAL ORDER. -- On the date specified in subsection (a), if in its final sequestration[1396] report OMB[1397] estimates that any sequestration is required, the President shall issue an order fully implementing without change all sequestrations required by the OMB calculations set forth in that report. This order shall be effective on issuance.

[1389] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1390] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1391] Section 250(c)(1) (*see supra* p. 372) defines "deficit" at least in part by reference to the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1392] Section 253(b) defines the term "excess deficit." *See supra* pp. 457-458.

[1393] Section 250(c)(3) defines "breach." *See supra* p. 373.

[1394] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1395] Section 250(c)(11) defines "account." *See supra* p. 377.

[1396] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1397] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

(h) WITHIN-SESSION SEQUESTRATION[1398] REPORTS AND ORDER. -- If an appropriation for a fiscal year in progress is enacted (after Congress adjourns[1399] to end the session for that budget year[1400] and before July 1 of that fiscal year) that causes a breach,[1401] 10 days later CBO[1402] shall issue a report containing the information required in paragraph (g)(2). Fifteen days after enactment, OMB[1403] shall issue a report containing the information required in paragraphs (g)(2) and (g)(4). On the same day as the OMB report, the President shall issue an order fully implementing without change all sequestrations required by the OMB calculations set forth in that report. This order shall be effective on issuance.

(i) GAO COMPLIANCE REPORT. -- On the date specified in subsection (a), the Comptroller General shall submit to the Congress and the President a report on --

(1) the extent to which each order issued by the President under this section complies with all of the requirements contained in this part, either certifying that the order fully and accurately complies with such requirements or indicating the respects in which it does not; and

(2) the extent to which each report issued by OMB[1404]

[1398] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1399] What happens if the Congress recesses to end the first session of a Congress? Congress plainly intended to require annual review of legislation. This language should be read as "adjourns or recesses to end a session."

[1400] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1401] Section 250(c)(3) defines "breach." *See supra* p. 373.

[1402] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1403] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1404] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

or CBO[1405] under this section complies with all of the requirements contained in this part, either certifying that the report fully and accurately complies with such requirements or indicating the respects in which it does not.

(j) LOW-GROWTH REPORT. -- At any time, CBO[1406] shall notify the Congress if --

(1) during the period consisting of the quarter during which such notification is given, the quarter preceding such notification, and the 4 quarters following such notification, CBO or OMB[1407] has determined that real economic growth[1408] is projected or estimated to be less than zero with respect to each of any 2 consecutive quarters within such period; or

(2) the most recent of the Department of Commerce's advance preliminary or final reports of actual real economic growth[1409] indicate that the rate of real economic growth for each of the most recently reported quarter and the immediately preceding quarter is less than one percent.[1410]

[1405] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1406] Section 250(c)(16) defines "CBO" to mean "the Director of the Congressional Budget Office." *See supra* p. 377.

[1407] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1408] Section 250(c)(10) defines "real economic growth." *See supra* p. 377.

[1409] Section 250(c)(10) defines "real economic growth." *See supra* p. 377.

[1410] Section 258 provides the procedural consequences of a report under this subsection. *See infra* pp. 543-556.

The Director of the Congressional Budget Office issued a letter under section 258(j)(1) on January 23, 1991, indicating that both his office and the Office of Management and Budget projected real growth to be less than zero for two consecutive quarters:

(continued...)

(k) ECONOMIC AND TECHNICAL ASSUMPTIONS. -- In all reports required by this section, OMB[1411] shall use the same economic and technical assumptions as used in the most recent budget submitted by the President under section 1105(a) of title 31, United States Code.[1412]

[1410](...continued)
The Honorable Dan Quayle
President of the Senate
United States Senate
Washington, DC 20510

Dear Mr. President:

Under section 254(j) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 904(j)), the Congressional Budget Office must notify the Congress in the event of an economic downturn. The section reads in part:

. . . .

This letter serves to notify the Congress that the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) project real economic growth to be less than zero with respect to the last quarter of calendar year 1990 and the first quarter of calendar year 1991. A letter from the Director of OMB informing CBO of the OMB forecast is enclosed.

Sincerely

Robert D. Reischauer

137 CONG. REC. S1,098 (Jan. 23, 1991).

[1411] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1412] Section 13101(a) of the Budget Enforcement Act amended section 254 to read as it does now. *See infra* p. 617. The statement of managers accompanying the conference report on the Budget Enforcement Act explains section 254 generally:

V. SEQUESTRATION REPORTS AND ORDERS

Current law

Under current law, the Directors of the Office of Management and Budget and the Congressional Budget Office issue initial and revised sequestration reports each year in August and October which estimate the baseline deficit for the fiscal year, determine whether the deficit target has been exceeded, and calculate the percentages and amounts by which spending in non-exempt accounts must be reduced to lower the estimated deficit to the

(continued...)

[1412] (...continued)
target level.

The Office of Management and Budget Director's initial and revised sequestration reports trigger initial and final presidential sequestration orders which implement any required sequestration reductions specified in the reports (the Congressional Budget Office reports are advisory). The General Accounting Office also issues a compliance report in November, which is also advisory. Through fiscal year 1992, a sequestration order is triggered if the baseline deficit exceeds the deficit target by more than $10 billion. For fiscal year 1993, when the target is zero, any deficit excess would trigger sequestration. The sequestration process expires at the end of fiscal year 1993. The President's sequestration orders must comply fully with the Office of Management and Budget Director's reports.

Sequestration reports and orders are only in August and October each year. There are no procedures for issuing additional or revised reports and orders to eliminate any excess deficit that occurs after the sequestration process for a fiscal year has been completed. Further, if sequestration is triggered, it applies to all non-exempt accounts. The only categorization is that one-half of the reductions are made in defense programs, with the other half coming from non-defense programs. There are no separate or specialized reporting requirements or presidential orders for other categories of spending.

House bill

The House bill establishes new sequestration reporting requirements and presidential sequestration orders to implement the discretionary spending sequester (enforcing the discretionary spending categories), the pay-as-you-go sequester (enforcing the deficit-neutrality of mandatory spending and receipt legislation), and the deficit sequester (enforcing the deficit targets).

The bill establishes the following timetable for sequestration reports and orders:

(continued...)

[1412](...continued)

On or before:	Action to be completed:
First Monday in February	Lock in the Office of Management and Budget estimating assumptions.
August 15	Initial snapshot.
August 20	Sequester preview.
Latest possible date before October 15	Final snapshot.
October 15	Pay-as-you-go and deficit sequester reports; Presidential order.
Within 15 days after end of session	Discretionary sequester reports; Presidential order.
30 days later	GAO compliance report.

On August 20, both the Congressional Budget Office and the Office of Management and Budget Directors issue sequester preview reports to the President and Congress for the pay-as-you-go and deficit sequesters for the fiscal year. For the pay-as-you-go sequester preview, the reports must set forth the change in the deficit for the fiscal year caused by the enactment of direct spending and receipts legislation, identify each law included in the estimate, and calculate the appropriate sequester percentage. For the deficit sequester, the reports must estimate the baseline deficit for the fiscal year, any deficit excess, the deficit margin, any deficit excess remaining after the pay-as-you-go sequester has been made, and calculate the specified reductions required to eliminate any remaining deficit excess.

On October 15, the Office of Management and Budget and Congressional Budget Office Directors issue revised pay-as-you-go and deficit sequester reports updated to reflect laws enacted through the final snapshot date and containing all the information required in the sequester preview reports. If the revised Office of Management and Budget report indicates that any pay-as-you-go and deficit sequester is required, the President shall issue an order on the same date implementing the sequester without change.

Within 15 days after the end of the session, the Congressional Budget Office and Office of Management and Budget Directors issue discretionary spending sequestration reports to the President and Congress. In general, the reports shall explain any adjustments made in the discretionary spending limits for budget authority and outlays for each fiscal year through fiscal year 1995, specify any breach in the discretionary categories for the current year and the budget year, and calculate the sequestration necessary to achieve the required reduction. If the Office of Management and Budget report indicates that any discretionary sequester is required, the President shall issue an order on the same date implementing the sequester without change.

(continued...)

[1412](...continued)

Within 30 days of the issuance of the discretionary spending sequester report and order, the General Accounting Office (GAO) shall submit to the President and Congress a compliance report on all the sequester reports and orders issued for the fiscal year.

Senate amendment

The Senate amendment provides that the estimates and determinations necessary to implement the new pay-as-you-go sequester and any deficit sequester shall be issued as part of the initial and revised sequestration reports required under current law. However, the Senate amendment changes the dates of submission for these reports. For the Congressional Budget Office, the initial sequestration report is due on January 27 (March 10 in years in which a new President is inaugurated) and the revised report is due on November 10 (the Congressional Budget Office reports remain advisory). For the Office of Management and Budget, the initial sequestration report is due simultaneously with submission of the President's budget -- February 1 in most years, and March 15 in years in which a new President is inaugurated -- and the revised report is due on November 15. An initial sequestration order would be issued simultaneously with the initial report and become effective on October 1. A final sequestration order would be effective November 15.

For discretionary spending sequestration, the Senate amendment requires both the Congressional Budget Office and the Office of Management and Budget to report to the President within 5 days after enactment of an appropriations act. The reports must determine whether any of the discretionary spending categories have been exceeded as a result of the act, and, if necessary, calculate the amounts and percentages by which spending in the affected categories must be reduced in the appropriate category to eliminate any excess. If the Office of Management and Budget report calculates a discretionary spending sequestration, the President must issue an order implementing the sequestration reductions -- within 15 days if the measure is enacted before June 30, and on November 15 if the measure is enacted between June 30 and November 1.

Conference agreement

As soon as possible after Congress completes action on a discretionary spending, direct spending, or revenue bill, and after consultation with the budget committees, the Congressional Budget Office (CBO) is to provide the Office of Management and Budget (OMB) with an estimate of the bill's effect on spending and revenues. Within 5 days after the bill's enactment, OMB transmits to the Congress its own estimate of the bill's budgetary impact. OMB is required to explain differences between its estimates and those of CBO. OMB is also required to use its bill estimates in subsequent sequestration reports.

The timetable for sequestration reports and orders is as follows:

(continued...)

[1412](...continued)

On or before:	Action to be completed:
5 days before the budget	CBO sequestration preview report.
President's budget submission	OMB sequestration preview report.
August 15	CBO sequestration update report.
August 20	OMB sequestration update report.
10 days after end of session	CBO final sequestration report.
15 days after end of session	OMB final sequestration report.
30 days later	GAO compliance report.

This timetable continues the feature of current law in which CBO issues its reports 5 days before OMB, and OMB is required to explain differences between its estimates and those of OMB.

All 3 sequestration reports will contain updated estimates of the maximum deficit amount and the discretionary spending limits for each category. They will also contain estimates of any net deficit increase or decrease (under the pay-as-you-go provisions), any excess deficit (compared to the deficit target), and the sequestration reductions and percentages necessary to eliminate a deficit increase or excess deficit. The final sequestration reports will include estimates of new budget authority and outlays for each discretionary spending category, the amounts of any breach in the discretionary spending limits, and the sequestration percentages necessary to eliminate a breach. In addition, the final reports will contain, for each budget account to be sequestered, estimates of the baseline level of sequestrable budgetary resources and outlays and the required reductions.

An extra pair of sequestration reports and an additional Presidential order will be required if, after the final sequestration report but before July 1, enactment of an appropriation bill causes a discretionary spending breach. These within-session sequestration reports are to contain the same information regarding discretionary spending as a final end-of-session sequestration report.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,157-60 (1990).

SEC. 255. EXEMPT PROGRAMS AND ACTIVITIES[1413]

(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS.[1414] -- Benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, and benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall be exempt from reduction under any order issued under this part.

[1413] As did the original Gramm-Rudman-Hollings, the new law exempts a number of programs from across-the-board cuts. The Budget Enforcement Act did not significantly change the list of exempt programs and activities set forth in this section. This section sets forth exemptions for Social Security benefits and tier I railroad retirement benefits (in subsection (a)), most veterans programs (in subsection (b)), net interest on the public debt (in subsection (c)), payments to individuals made under the earned income tax credit (under subsection (d)), non-defense unobligated balances (under subsection (e)), outlays for the three programs the National Wool Act, the special milk program, and the vocational rehabilitation basic state grants, other than their automatic spending increases (under subsection (f)), and several other enumerated programs and activities (under subsection (g)), including certain prior legal obligations of the Government and most low-income programs. In addition, the President has the option to exempt military personnel from sequestration (under subsection (h)), if he or she wishes to increase the cuts in other defense programs.

Exemption from sequestration does not, however, remove these programs from coverage by Gramm-Rudman-Hollings. As set forth in the pay-as-you-go provisions of section 252 (*see supra* pp. 433-454), any legislation (enacted after the 101st Congress) affecting direct spending (that is, spending other than appropriations or Social Security) or taxes that increases the deficit will trigger offsetting across-the-board cuts in those entitlement programs that the law does not exempt. Thus, increasing spending in an exempt account without paying for it may trigger cuts in the non-exempt accounts.

[1414] Section 13101(c)(1) of the Budget Enforcement Act amended subsection (a) to read as it does now. *See infra* p. 618. Prior to enactment of the Budget Enforcement Act, subsection (a) read as follows:

> (a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS. -- Increases in benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, or in benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall not be considered "automatic spending increases" for purposes of this title; and no reduction in any such increase or in any of the benefits involved shall be made under any order issued under this part.

(b) VETERANS PROGRAMS. -- The following programs shall be exempt from reduction under any order issued under this part:

National Service Life Insurance Fund (36-8132-0-7-701);

Service-Disabled Veterans Insurance Fund (36-4012-0-3-701);

Veterans Special Life Insurance Fund (36-8455-0-8-701);

Veterans Reopened Insurance Fund (36-4010-0-3-701);

United States Government Life Insurance Fund (36-8150-0-7-701);

Veterans Insurance and Indemnity (36-0120-0-1-701);

Special Therapeutic and Rehabilitation Activities Fund (36-4048-0-3-703);

Veterans' Canteen Service Revolving Fund (36-4014-0-3-705);

Benefits under chapter 21 of title 38, United States Code, relating to specially adapted housing and mortgage-protection life insurance for certain veterans with service-connected disabilities (36-0137-0-1-702);

Benefits under section 907 of title 38, United States Code, relating to burial benefits for veterans who die as a result of service-connected disability (36-0155-0-1-701);

Benefits under chapter 39 of title 38, United States Code, relating to automobiles and adaptive equipment for certain disabled veterans and members of the Armed

Forces (36-0137-0-1-702);

Veterans' compensation (36-0153-0-1-701); and

Veterans' pensions (36-0154-0-1-701).

(c) NET INTEREST. -- No reduction of payments for net interest (all of major functional category 900) shall be made under any order issued under this part.

(d) EARNED INCOME TAX CREDIT. -- Payments to individuals made pursuant to section 32 of the Internal Revenue Code of 1954 shall be exempt from reduction under any order issued under this part.

(e) NON-DEFENSE UNOBLIGATED BALANCES.[1415] -- Unobligated balances of budget authority[1416] carried over from prior fiscal years, except balances in the defense category,[1417] shall be exempt from reduction under any order issued under this part.

(f) CERTAIN PROGRAM BASES. -- Outlays[1418] for programs specified in paragraph (1) of section 257[1419] shall be subject to

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[1415] Section 13101(c)(2) of the Budget Enforcement Act amended subsection (e) to read as it does now. *See infra* p. 618. Prior to enactment of the Budget Enforcement Act, subsection (e) read as follows:

> (e) OFFSETTING RECEIPTS AND COLLECTIONS. -- Offsetting receipts and collections shall not be reduced under any order issued under this part.

[1416] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" at least in part by reference to the definition of section 3(2) of the Congressional Budget Act. *See supra* p. 11-13.

[1417] Section 250(c)(4) defines "category." *See supra* p. 373.

[1418] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1419] This reference is to programs for which Gramm-Rudman-Hollings calls for cuts in automatic spending increases only. Under Gramm-Rudman-Hollings as it existed before enactment of the Budget Enforcement Act, section 257(1) set forth the provisions on these programs. *See supra* note 1117. Those provisions now appear in section 256(a), so this (continued...)

reduction only in accordance with the procedures established in section 251(a)(3)(C)[1420] and 256(b).[1421]

[1419] (...continued)
reference should be to section 256(a). Section 256(a) states:

> (a) AUTOMATIC SPENDING INCREASES. -- Automatic spending increases are increases in outlays due to changes in indexes in the following programs:
>
> (1) National Wool Act;
>
> (2) Special milk program; and
>
> (3) Vocational rehabilitation basic State grants.
>
> In those programs all amounts other than the automatic spending increases shall be exempt from reduction under any order issued under this part.

See infra p. 508.

Congress's intent to refer to section 256(a) can be seen from the fact that there is no longer any section 257(1). Section 257(a) sets forth general principles relating to the baseline. *See infra* p. 529. At least some drafters of the Budget Enforcement Act intended to amend section 255(f) to read as does the new section 255(h), on "OPTIONAL EXEMPTION OF MILITARY PERSONNEL." *See infra* note 1436. These drafters would thus have repealed the provisions of subsection (f) as it reads now, and thus did not change the cross-references set forth here.

[1420] This reference is to procedures for the reduction of automatic spending increases. Under Gramm-Rudman-Hollings as it existed before enactment of the Budget Enforcement Act, section 251(a)(3)(C) set forth such procedures, stating:

> (C) The amount by which outlays for automatic spending increases scheduled to take effect during the fiscal year are to be reduced shall be credited as reductions in outlays under non-defense programs, and the total amount of reductions in outlays under non-defense programs required under subparagraph (B) shall be reduced accordingly.

This provision no longer exists in section 251.

Related provisions now appear in sections 252(c)(1)(A) and 253(e)(1), so this eference should be to those sections. Section 252(c)(1)(A), regarding the pay-as-you-go equester, states:

> (c) ELIMINATING A DEFICIT INCREASE. -- (1) The amount required to be sequestered in a fiscal year under subsection (b) shall be obtained from non-exempt direct spending accounts from actions taken in the following order:
>
> (A) FIRST. -- All reductions in automatic spending increases

(continued...)

(g) OTHER PROGRAMS AND ACTIVITIES. --

(1)(A) The following budget accounts[1422] and activities shall be exempt from reduction under any order issued under this part:

Activities resulting from private donations, bequests, or voluntary contributions to the Govern-

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[1420](...continued)
specified in section 256(a) shall be made.

See supra p. 435.

Section 253(e)(1), regarding deficit target sequesters, states:

> (e) NON-DEFENSE. -- Actions to reduce non-defense accounts shall be taken in the following order:
>
> (1) FIRST. -- All reductions in automatic spending increases under section 256(a) shall be made.

See supra p. 459.

Congress's intent to refer to sections 252(c)(1)(A) and 253(e)(1), and not to section 251(a)(3)(C), can be seen from the fact that there is no longer any section 251(a)(3)(C). Section 251(a)(3) deals with procedures for sequestration when the President exempts military personnel. *See supra* p. 404. At least some drafters of the Budget Enforcement Act intended to amend section 255(f) to read as does the new section 255(h), on "OPTIONAL EXEMPTION OF MILITARY PERSONNEL." *See infra* note 1436. These drafters would thus have repealed the provisions of subsection (f) as it reads now, and thus did not change the cross-references set forth here.

[1421] This reference is to procedures for the treatment of Federal administrative expenses under sequestration and thus should be to section 256(h). *See infra* pp. 517-519. Under Gramm-Rudman-Hollings as it existed before enactment of the Budget Enforcement Act, section 256(b) set forth such procedures. So as to put the subsections of section 255 in the order that they take would effect, section 13101(d)(2) of the Budget Enforcement Act moved what used to be subsection (b) to be what is now subsection (h) and moved what used to be subsection (c) to be what is now subsection (b). *See infra* p. 620.

At least some drafters of the Budget Enforcement Act intended to amend section 255(f) to read as does the new section 255(h), on "OPTIONAL EXEMPTION OF MILITARY PERSONNEL." *See infra* note 1436. These drafters would thus have repealed the provisions of subsection (f) as it reads now, and thus did not change the cross-references set forth here.

[1422] Section 250(c)(11) defines "account." *See supra* p. 377.

ment;

Administration of Territories, Northern Mariana Islands Covenant Grants (14-0412-0-1-806);

Thrift Savings Fund (26-8141-0-7-602);

Alaska Power Administration, Operations and maintenance (89-0304-0-1-271);

Appropriations for the District of Columbia (to the extent they are appropriations of locally raised funds);

Bonneville Power Administration fund and borrowing authority established pursuant to section 13 of Public Law 93-454 (1974), as amended (89-4045-0-3-271);

Bureau of Indian Affairs, miscellaneous payments to Indians (14-2303-0-1-452);

Bureau of Indian Affairs miscellaneous trust funds, tribal trust funds (14-9973-0-7-999);

Claims, defense (97-0102-0-1-051);

Claims, judgments, and relief acts (20-1895-0-1-806);

Coinage profit fund (20-5811-0-2-803);

Compensation of the President (11-0001-0-1-802);

Customs Service, miscellaneous permanent appropriations (20-9922-0-2-852);

Comptroller of the Currency;

Director of the Office of Thrift Supervision;[1423]

Dual benefits payments account (60-0111-0-1-601);

Eastern Indian land claims settlement fund (14-2202-0-1-806);

Exchange stabilization fund (20-4444-0-3-155);

Federal Deposit Insurance Corporation;

Federal Deposit Insurance Corporation, Bank Insurance Fund;[1424]

Federal Deposit Insurance Corporation, FSLIC Resolution Fund;

Federal Deposit Insurance Corporation, Savings Association Insurance Fund;

Federal Housing Finance Board;[1425]

[1423] Section 743(a)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added the words "Director of the Office of Thrift Supervision;" at this point. Pub. L. No. 101-73, § 743(a)(1), 103 Stat. 183, 437 (Aug. 9, 1989).

[1424] Section 743(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck out the words "Federal Home Loan Bank Board;" at this point and inserted:

> Federal Deposit Insurance Corporation, Bank Insurance Fund;
>
> Federal Deposit Insurance Corporation, FSLIC Resolution Fund;
>
> Federal Deposit Insurance Corporation, Savings Association Insurance Fund;

Pub. L. No. 101-73, § 743(a)(2), 103 Stat. 183, 437 (Aug. 9, 1989).

[1425] Section 743(a)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck out the words "Federal Home Loan Bank Board, Federal Savings and (continued...)

Federal payment to the railroad retirement account (60-0113-0-1-601);

Foreign military sales trust fund (11-8242-0-7-155);

Health professions graduate student loan insurance fund (Health Education Assistance Loan Program) (75-4305-0-3-553);

Higher education facilities loans and insurance (91-0240-01-502);

Internal Revenue collections for Puerto Rico (20-5737-0-2-852);

Intragovernmental funds, including those from which the outlays[1426] are derived primarily from resources paid in from other government accounts,[1427] except to the extent such funds are augmented by direct appropriations for the fiscal year during which an order is in effect;

Panama Canal Commission, operating expenses (95-5190-0-2-403), and Panama Canal Commission, capital outlay[1428] (95-5190-0-2-403);

Medical facilities guarantee and loan fund,

[1425](...continued)
Loan Insurance Corporation;" at this point and inserted "Federal Housing Finance Board;" Pub. L. No. 101-73, § 743(a)(3), 103 Stat. 183, 437 (Aug. 9, 1989).

[1426] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1427] Section 250(c)(11) defines "account." *See supra* p. 377.

[1428] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

Federal interest subsidies for medical facilities (75-4430-03-551);

National Credit Union Administration;

National Credit Union Administration, central liquidity facility;

National Credit Union Administration, credit union share insurance fund;

Payment of Vietnam and USS Pueblo prisoner-of-war claims (15-0104-0-1-153);

Payment to civil service retirement and disability fund (24-0200-0-1-805);

Payments to copyright owners (03-5175-0-2-376);

Payments to health care trust funds (75-0580-0-1-572);

Payments to military retirement fund (97-0040-0-1-054);

Compact of Free Association, economic assistance pursuant to Public Law 99-658 (14-0415-0-1-806);

Payments to social security trust funds (75-0404-0-1-571);

Payments to state and local government fiscal assistance trust fund (20-2111-0-1-851);

Payments to the foreign service retirement and disability fund (11-1036-0-1-153 and 19-0540-0-1-153);

Payments to trust funds from excise taxes or other receipts properly creditable to such trust funds;

Payments to the United States territories, fiscal assistance (14-0418-0-1-852);

Payments to widows and heirs of deceased Members of Congress (00-0215-0-1-801);

Postal service fund (18-4020-0-3-372);

Resolution Funding Corporation;[1429]

Resolution Trust Corporation;

Salaries of Article III judges;

Soldiers and Airmen's Home, payment of claims (84-8930-0-7-705);

Southeastern Power Administration, Operations and maintenance (89-0302-0-1-271);

Southwestern Power Administration, Operations and maintenance (89-0303-0-1-271);

Tennessee Valley Authority fund, except non-power programs and activities (64-4110-0-3-999);

Washington Metropolitan Area Transit Author-

[1429] Section 743(a)(4) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added at this point:

Resolution Funding Corporation;

Resolution Trust Corporation;

Pub. L. No. 101-73, § 743(a)(4), 103 Stat. 183, 437 (Aug. 9, 1989).

ity, interest payments (46-0300-0-1-401);

Western Area Power Administration, Construction, rehabilitation, operations, and maintenance (89-5068-0-2-271); and

Western Area Power Administration, Colorado River basins power marketing fund (89-4452-0-3-271).

(B) The following budget accounts[1430] and activities shall be exempt from reduction under any order issued under this part:

Black lung benefits (20-8144-0-7-601);

Central Intelligence Agency retirement and disability system fund (56-3400-0-1-054);

Civil service retirement and disability fund (24-8135-0-7-602);

Comptrollers general retirement system (05-0107-0-1-801);

Foreign service retirement and disability fund (19-8186-0-7-602);

Judicial survivors' annuities fund (10-8110-0-7-602);

Longshoremen's and harborworkers' compensation benefits (16-9971-0-7-601);

Military retirement fund (97-8097-0-7-602);

National Oceanic and Atmospheric Adminis-

[1430] Section 250(c)(11) defines "account." *See supra* p. 377.

tration retirement (13-1450-0-1-306);

Pensions for former Presidents (47-0105-0-1-802);

Railroad retirement tier II (60-8011-0-7-601);

Railroad supplemental annuity pension fund (60-8012-0-7--602);[1431]

Retired pay, Coast Guard (69-0241-0-1-403);

Retirement pay and medical benefits for commissioned officers, Public Health Service (75-0379-0-1-551);

Special benefits, Federal Employees' Compensation Act (16-1521-0-1-600);

Special benefits for disabled coal miners (75-0409-0-1-601); and

Tax Court judges survivors annuity fund (23-8115-0-7-602).

(2) Prior legal obligations of the Government in the following budget accounts[1432] and activities shall be exempt from any order issued under this part:

Agency for International Development, Housing, and other credit guarantee programs (72-4340-0-3-151);

Agricultural credit insurance fund (12-4140-0-

[1431] Section 13101(c)(3) of the Budget Enforcement Act added the item for "Railroad supplemental annuity pension fund (60-8012-0-7-602);". *See infra* p. 618.

[1432] Section 250(c)(11) defines "account." *See supra* p. 377.

3-351);

Biomass energy development (20-0114-0-1-271);

Check forgery insurance fund (20-4109-0-3-803);

Community development grant loan guarantees (86-0162-0-1-451);

Credit union share insurance fund (25-4468-0-3-371);

Economic development revolving fund (13-4406-0-3-452);

Employees life insurance fund (24-8424-0-8-602);

Energy security reserve (Synthetic Fuels Corporation) (20-0112-0-1-271);

Export-Import Bank of the United States, Limitation of program activity (83-4027-0-3-155);

Federal Aviation Administration, Aviation insurance revolving fund (69-4120-0-3-402);

Federal Crop Insurance Corporation fund (12-4085-0-3-351);

Federal Deposit Insurance Corporation (51-8419-0-8-371);

Federal Emergency Management Agency, National flood insurance fund (58-4236-0-3-453);

Federal Emergency Management Agency,

National insurance development fund (58-4235-0-3-451);

Federal Housing Administration fund (86-4070-0-3-371);[1433]

Federal ship financing fund (69-4301-0-3-403);

Federal ship financing fund, fishing vessels (13-4417-0-3-376);

Geothermal resources development fund (89-0206-0-1-271);

Government National Mortgage Association, Guarantees of mortgage-backed securities (86-4238-0-3-371);

Health education loans (75-4307-0-3-553);

Homeowners assistance fund, Defense (97-4090-0-3-051);

Indian loan guarantee and insurance fund (14-4410-0-3-452);

International Trade Administration, Operations and administration (13-1250-0-1-376);

Low-rent public housing, Loans and other expenses (86-4098-0-3-604);

Maritime Administration, War-risk insurance revolving fund (69-4302-0-3-403);

[1433] Section 743(c) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck "Federal Savings and Loan Insurance Corporation fund (82-4037-0-3-371);" which originally appeared at this point. Pub. L. No. 101-73, § 743(c), 103 Stat. 183, 437 (Aug. 9, 1989).

Overseas Private Investment Corporation (71-4030-0-3-151);

Pension Benefit Guaranty Corporation fund (16-4204-0-3-601);

Rail service assistance (69-0122-0-1-401);

Railroad rehabilitation and improvement financing fund (69-4411-0-3-401);

Rural development insurance fund (12-4155-0-3-452);

Rural electric and telephone revolving fund (12-4230-8-3-271);

Rural housing insurance fund (12-4141-0-3-371);

Small Business Administration, Business loan and investment fund (73-4154-0-3-376);

Small Business Administration, Lease guarantees revolving fund (73-4157-0-3-376);

Small Business Administration, Pollution control equipment contract guarantee revolving fund (73-4147-0-3-376);

Small Business Administration, Surety bond guarantees revolving fund (73-4156-0-3-376);

Veterans Administration, Loan guaranty revolving fund (36-4025-0-3-704);

Veterans Administration, Servicemen's group life insurance fund (36-4009-0-3-701);

(h)[1434] LOW-INCOME PROGRAMS. -- The following programs shall be exempt from reduction under any order issued under this part:

Aid to families with dependent children (75-0412-0-1-609);

Child nutrition (12-3539-0-1-605);

Food stamp programs (12-3505-0-1-605 and 12-3550-0-1-605);

Grants to States for Medicaid (75-0512-0-1-551);

Supplemental Security Income Program (75-0406-0-1-609); and

Women, infants, and children program (12-3510-0-1-605).

(i) IDENTIFICATION OF PROGRAMS. -- For purposes of subsections (g) and (h), programs are identified by the designated budget account[1435] identification code numbers set forth in the Budget of the United States Government, 1986 -- Appendix.

(h)[1436] OPTIONAL EXEMPTION OF MILITARY PERSONNEL. --

[1434] Section 13101(c)(4) of the Budget Enforcement Act added another subsection (h) at the end of section 255. *See infra* p. 618. As section 13101(c)(4) of the Budget Enforcement Act simply added the new subsection (h) at the end of section 255 and did not amend the existing subsection (h) to read as the new subsection (h), Congress evidently wanted to add another subsection and not to repeal the existing subsection (h).

[1435] Section 250(c)(11) defines "account." *See supra* p. 377.

[1436] Section 13101(c)(4) of the Budget Enforcement Act added subsection (h) "at the end" of section 255. *See infra* p. 618. As section 13101(c)(4) of the Budget Enforcement Act simply added the new subsection (h) at the end of section 255 and did not amend the existing subsection (h) to read as the new subsection (h), Congress evidently wanted to add another subsection and not to repeal the existing subsection (h). As subsections (h) and (continued...)

(1) The President may, with respect to any military personnel account,[1437] exempt that account from sequestration[1438] or provide for a lower uniform percentage reduction than would otherwise apply.

(2) The President may not use the authority provided by paragraph (1) unless he notifies the Congress of the manner in which such authority will be exercised on or before the initial snapshot date for the budget year.[1439]

[1436] (...continued)
(i) already existed, however, the Budget Enforcement Act should have added a new subsection (j) at the end of section 255, or perhaps have inserted the new subsection (h) in place of the existing subsection (f), which at least some drafters of the Budget Enforcement Act intended to repeal, as section 256(a) (*see infra* p. 508) now accomplishes effectively the same thing as section 255(f) (among other things).

[1437] Section 250(c)(11) defines "account." *See supra* p. 377.

[1438] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1439] Section 250(c)(12) defines "budget year." *See supra* p. 377.

SEC. 256. EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES

(a)[1440] AUTOMATIC SPENDING INCREASES. -- Automatic spending increases are increases in outlays[1441] due to changes in indexes in the following programs:

(1) National Wool Act;

(2) Special milk program; and

(3) Vocational rehabilitation basic State grants.

[1440] Section 13101(d)(1) of the Budget Enforcement Act amended subsection (a) to read as it does now. *See infra* p. 619. Prior to enactment of the Budget Enforcement Act, subsection (a) read as follows:

> (a) EFFECT OF REDUCTIONS AND SEQUESTRATIONS. --
>
> (1) REDUCTIONS IN AUTOMATIC SPENDING INCREASES. -- Notwithstanding any other provision of law, any change in the Consumer Price Index or any other index measuring costs, prices, or wages (or in any component of any such index), under a program listed in section 257(1), that is not taken into account for purposes of determining the amount of an automatic spending increase (if any) under such program for a fiscal year for which an order is issued under section 252 shall not be taken into account for purposes of determining any automatic spending increase during any fiscal year thereafter.
>
> (2) SEQUESTRATIONS. -- Any amounts of new budget authority; unobligated balances; new loan guarantee commitments or limitations; new direct loan obligations, commitments, or limitations; spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974; or obligation limitations which are sequestered or automatic spending increases which are reduced under an order issued under section 252 are permanently cancelled or reduced; with the exception of amounts sequestered or reduced in special or trust funds, which shall remain in such funds and be available in accordance with and to the extent permitted by law, including the provisions of this Act.

[1441] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

In those programs all amounts other than the automatic spending increases shall be exempt from reduction under any order issued under this part.[1442]

(b)[1443] EFFECT OF ORDERS ON THE GUARANTEED STUDENT LOAN PROGRAM. -- (1) Any reductions which are required to be achieved from the student loan programs operated pursuant to part B of title IV of the Higher Education Act of 1965, as a consequence of an order issued pursuant to section 254,[1444] shall be achieved only from loans described in paragraphs (2) and (3) by the application of the measures described in such paragraphs.

(2) For any loan made during the period beginning on the date that an order issued under section 254[1445] takes effect with respect to a fiscal year and ending at the close of such fiscal year, the rate used in computing the special allowance payment pursuant to section 438(b)(2)(A)(iii) of such Act for each of the first four special allowance payments for such loan shall be adjusted by reducing such rate by the lesser of --

(A) 0.40 percent, or

(B) the percentage by which the rate specified

[1442] See also subsection (f) of section 255 (the section on exemptions), which also limits sequestration of these programs. *See supra* p. 493.

[1443] So as to put the subsections of section 255 in the order that they take would effect, section 13101(d)(2) of the Budget Enforcement Act moved what used to be subsection (c) to be what is now subsection (b) (and moved what used to be subsection (b) to what is now subsection (h)). *See infra* p. 620.

[1444] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

[1445] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

in such section exceeds 3 percent.

(3) For any loan made during the period beginning on the date that an order issued under section 254[1446] takes effect with respect to a fiscal year and ending at the close of such fiscal year, the origination fee which is authorized to be collected pursuant to section 438(c)(2) of such Act shall be increased by 0.50 percent.

(c)[1447] TREATMENT OF FOSTER CARE AND ADOPTION ASSISTANCE PROGRAMS. -- Any order issued by the President under section 254[1448] shall make the reduction which is otherwise required under the foster care and adoption assistance programs (established by part E of title IV of the Social Security Act) only with respect to payments and expenditures made by States in which increases in foster care maintenance payment rates or adoption assistance payment rates (or both) are to take effect during the fiscal year involved, and only to the extent that the required reduction can be accomplished by applying a uniform percentage reduction to the Federal matching payments that each such State would otherwise receive under section 474 of that Act (for such fiscal year) for that portion of the State's payments which is attributable to the increases taking effect during that year. No State's matching payments from the Federal Government for foster care maintenance payments or for adoption assistance maintenance payments may be reduced by a percentage exceeding the applicable domestic sequestra-

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[1446] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

[1447] So as to put the subsections of section 255 in the order that they take would effect, section 13101(d)(2) of the Budget Enforcement Act moved what used to be subsection (f) to be what is now subsection (c) (and moved what used to be subsection (c) to what is now subsection (b)). *See infra* p. 620.

[1448] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

tion[1449] percentage.[1450] No State may, after the date of the enactment of this joint resolution, make any change in the timetable for making payments under a State plan approved under part E of title IV of the Social Security Act which has the effect of changing the fiscal year in which expenditures under such part are made.

(d) SPECIAL RULES FOR MEDICARE PROGRAM. --

(1)[1451] CALCULATION OF REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS. -- To achieve the total percentage reduction in those programs required by sections 252 and 253, and notwithstanding section 710 of the Social Security Act, OMB[1452] shall determine, and the applicable Presidential order under section 254 shall implement, the percentage reduction that shall apply to payments under the health insurance programs under

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[1449] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1450] Section 13101(d)(4) of the Budget Enforcement Act added this second sentence of subsection (c). *See infra* p. 620.

[1451] Section 13101(d)(5) of the Budget Enforcement Act amended paragraph (1) to read as it does now. *See infra* p. 620. Before the enactment of the Budget Enforcement Act, paragraph (1) read as follows:

> (1) MAXIMUM PERCENTAGE REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS. -- The maximum permissible reduction for the health insurance programs under title XVIII of the Social Security Act for any fiscal year, pursuant to an order issued under section 252 [dealing, as it did then, with Presidential orders], consists only of a reduction of --
>
> (A) 1 percent in the case of fiscal year 1986, and
>
> (B) 2 percent (or such higher percentage as may apply as determined in accordance with section 252(a)(4)(B)(ii)) in the case of any subsequent fiscal year,
>
> in each separate payment amount otherwise made for a covered service under those programs without regard to this part.

[1452] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

title XVIII[1453] of the Social Security Act for services furnished after the order is issued, such that the reduction made in payments under that order shall achieve the required total percentage reduction in those payments for that fiscal year as determined on a 12-month basis.

(2) TIMING OF APPLICATION OF REDUCTIONS. --

(A) IN GENERAL. -- Except as provided in subparagraph (B), if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration[1454] order, the reduction shall be applied to payment for services furnished during the effective period of the order. For purposes of the previous sentence, in the case of inpatient services furnished for an individual, the services shall be considered to be furnished on the date of the individual's discharge from the inpatient facility.

(B) PAYMENT ON THE BASIS OF COST REPORTING PERIODS. -- In the case in which payment for services of a provider of services is made under title XVIII[1455] of the Social Security Act on a basis relating to the reasonable cost incurred for the services during a cost reporting period of the provider, if a reduction is made under paragraph (1) in payment amounts pursuant to a sequestration[1456] order, the reduction shall be applied to payment for costs for such services incurred at any time during each cost reporting period of the provider any part of which occurs during the effective period of the order, but

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[1453] 42 U.S.C. § § 1395-1395ccc (1988).

[1454] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1455] 42 U.S.C. § § 1395-1395ccc (1988).

[1456] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

only (for each such cost reporting period) in the same proportion as the fraction of the cost reporting period that occurs during the effective period of the order.[1457]

(3) NO INCREASE IN BENEFICIARY CHARGES IN ASSIGNMENT-RELATED CASES. -- If a reduction in payment amounts is made under paragraph (1) for services for which payment under part B[1458] of title XVIII of the Social Security Act is made on the basis of an assignment described in section 1842(b)(3)(B)(ii), in accordance with section 1842(b)(6)(B), or under the procedure described in section 1870(f)(1), of such Act, the person furnishing the services shall be considered to have accepted payment of the reasonable charge for the services, less any reduction in payment amount made pursuant to a sequestration[1459] order, as payment in full.

(4) NO EFFECT ON COMPUTATION OF AAPCC. -- In computing the adjusted average per capita cost for purposes of section 1876(a)(4) of the Social Security Act, the Secretary of Health and Human Services shall not take into account any reductions in payment amounts which have been or may be effected under this part.

[1457] Section 13101(d)(6) of the Budget Enforcement Act repealed paragraph (d)(2)(C). *See infra* p. 621. Before the enactment of the Budget Enforcement Act, paragraph (d)(2)(C) read as follows:

> (C) EFFECTIVE PERIOD OF ORDER FOR FISCAL YEAR 1986. -- For purposes of this paragraph, the effective period of a sequestration order for fiscal year 1986 is the period beginning on March 1, 1986, and ending on September 30, 1986.

[1458] 42 U.S.C. § § 1395j-1395w (1988).

[1459] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

(e)[1460] COMMUNITY AND MIGRANT HEALTH CENTERS, INDIAN HEALTH SERVICES AND FACILITIES, AND VETERANS' MEDICAL CARE. --

(1) The maximum permissible reduction in budget authority[1461] for any account[1462] listed in paragraph (2) for any fiscal year, pursuant to an order issued under section 254,[1463] shall be --

(A) 1 percent in the case of the fiscal year 1986, and

(B) 2 percent in the case of any subsequent fiscal year.

(2) The accounts[1464] referred to in paragraph (1) are as follows:

(A) Community health centers (75-0350-0-1-550).

(B) Migrant health centers (75-0350-0-1-550).

(C) Indian health facilities (75-0391-0-1-551).

(D) Indian health services (75-0390-0-1-551).

[1460] So as to put the subsections of section 255 in the order that they take would effect, section 13101(d)(2) of the Budget Enforcement Act moved what used to be subsection (k) to be what is now subsection (e) (and moved what used to be subsection (e) to what is now subsection (f)). *See infra* p. 620.

[1461] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" at least in part by reference to the definition of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1462] Section 250(c)(11) defines "account." *See supra* p. 377.

[1463] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

[1464] Section 250(c)(11) defines "account." *See supra* p. 377.

(E) Veterans' medical care (36-0160-0-1-703).

For purposes of the preceding provisions of this paragraph, programs are identified by the designated budget account[1465] identification code numbers set forth in the Budget of the United States Government -- Appendix.

(f)[1466] TREATMENT OF CHILD SUPPORT ENFORCEMENT PROGRAM. -- Notwithstanding any change in the display of budget accounts,[1467] any order issued by the President under section 254[1468] shall accomplish the full amount of any required reduction in expenditures under sections 455 and 458 of the Social Security Act by reducing the Federal matching rate for State administrative costs under such program, as specified (for the fiscal year involved) in section 455(a) of such Act, to the extent necessary to reduce such expenditures by that amount.

(g) FEDERAL PAY. --

(1) IN GENERAL. -- For purposes of any order issued under section 254[1469] --

(A) Federal pay under a statutory pay system, and

(B) elements of military pay,

[1465] Section 250(c)(11) defines "account." *See supra* p. 377.

[1466] So as to put the subsections of section 255 in the order that they take would effect, section 13101(d)(2) of the Budget Enforcement Act moved what used to be subsection (e) to be what is now subsection (f) (and moved what used to be subsection (f) to what is now subsection (c)). *See infra* p. 620.

[1467] Section 250(c)(11) defines "account." *See supra* p. 377.

[1468] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

[1469] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

shall be subject to reduction under an order in the same manner as other administrative expense components of the Federal budget; except that no such order may reduce or have the effect of reducing the rate of pay to which any individual is entitled under any such statutory pay system or the rate of any element of military pay to which any individual is entitled under title 37, United States Code, or any increase in rates of pay which is scheduled to take effect under section 5305 of title 5, United States Code, section 1009 of title 37, United States Code, or any other provision of law.

(2) DEFINITIONS. -- For purposes of this subsection:

(A) The term "statutory pay system" shall have the meaning given that term in section 5301(c) of title 5, United States Code.

(B) The term "elements of military pay" means --

(i) the elements of compensation of members of the uniformed services specified in section 1009 of title 37, United States Code,

(ii) allowances provided members of the uniformed services under sections 403a and 405 of such title, and

(iii) cadet pay and midshipman pay under section 203(c) of such title.

(C) The term "uniformed services" shall have the meaning given that term in section 101(3) of title 37, United States Code.

(h)[1470] TREATMENT OF FEDERAL ADMINISTRATIVE EXPENSES. --

(1) Notwithstanding any other provision of this title, administrative expenses incurred by the departments and agencies, including independent agencies, of the Federal Government in connection with any program, project, activity, or account[1471] shall be subject to reduction pursuant to an order issued under section 254,[1472] without regard to any exemption, exception, limitation, or special rule which is otherwise applicable with respect to such program, project, activity, or account under this part.

(2) Notwithstanding any other provision of law, administrative expenses of any program, project, activity, or account[1473] which is self-supporting and does not receive appropriations shall be subject to reduction under a sequester[1474] order, unless specifically exempted in this joint resolution.

(3) Payments made by the Federal Government to reimburse or match administrative costs incurred by a State or political subdivision under or in connection with any program, project, activity, or account[1475] shall not be considered administrative expenses of the Federal Government for purposes of this section, and shall be subject to

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[1470] So as to put the subsections of section 255 in the order that they take would effect, section 13101(d)(2) of the Budget Enforcement Act moved what used to be subsection (b) to be what is now subsection (h) (and moved what used to be subsection (h) to be what is now subsection (i)). *See infra* p. 620.

[1471] Section 250(c)(11) defines "account." *See supra* p. 377.

[1472] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

[1473] Section 250(c)(11) defines "account." *See supra* p. 377.

[1474] Section 250(c)(2) defines "sequester." *See supra* p. 372.

[1475] Section 250(c)(11) defines "account." *See supra* p. 377.

reduction or sequestration[1476] under this part to the extent (and only to the extent) that other payments made by the Federal Government under or in connection with that program, project, activity, or account are subject to such reduction or sequestration; except that Federal payments made to a State as reimbursement of administrative costs incurred by such State under or in connection with the unemployment compensation programs specified in subsection (h)(1) shall be subject to reduction or sequestration under this part notwithstanding the exemption otherwise granted to such programs under that subsection.

(4) Notwithstanding any other provision of law, this ubsection shall not apply with respect to the following:

(A) Comptroller of the Currency.

(B) Federal Deposit Insurance Corporation.

(C) Office of Thrift Supervision.[1477]

(D) Office of Thrift Supervision.[1478]

(E) National Credit Union Administration.

(F) National Credit Union Administration, central liquidity facility.

(G) Federal Retirement Thrift Investment Board.

[1476] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1477] Section 743(b)(1) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck "Federal Home Loan Bank Board." at this point and inserted "Office of Thrift Supervision." Pub. L. No. 101-73, § 743(b)(1), 103 Stat. 183, 437 (Aug. 9, 1989).

[1478] Section 743(b)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 struck "Federal Savings and Loan Insurance Corporation." at this point and inserted "Office of Thrift Supervision." a second time. Pub. L. No. 101-73, § 743(b)(2), 103 Stat. 183, 437 (Aug. 9, 1989).

(H) Resolution Funding Corporation.[1479]

(I) Resolution Trust Corporation.

(i)[1480] TREATMENT OF PAYMENTS AND ADVANCES MADE WITH RESPECT TO UNEMPLOYMENT COMPENSATION PROGRAMS. --

(1) For purposes of section 254[1481] --

(A) any amount paid as regular unemployment compensation by a State from its account in the Unemployment Trust Fund (established by section 904(a) of the Social Security Act),

(B) any advance made to a State from the Federal unemployment account (established by section 904(g) of such Act) under title XII of such Act and any advance appropriated to the Federal

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[1479] Section 743(b)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added at this point:

> (H) Resolution Funding Corporation.
>
> (I) Resolution Trust Corporation.

Pub. L. No. 101-73, § 743(b)(3), 103 Stat. 183, 437 (Aug. 9, 1989).

[1480] So as to put the subsections of section 255 in the order that they take would effect, section 13101(d)(2) of the Budget Enforcement Act moved what used to be subsection (h) to be what is now subsection (i), and repealed what used to be subsection (i). *See infra* p. 620. Prior to enactment of the Budget Enforcement Act, subsection (i) read as follows:

> (i) TREATMENT OF MINE WORKER DISABILITY COMPENSATION INCREASES AS AUTOMATIC SPENDING INCREASES. -- An order issued by the President under section 252 may not result in eliminating or reducing an increase in disability benefits under the Federal Mine Safety and Health Act except in the manner provided for automatic spending increases under section 252(a)(1)(A), and no such increase may, pursuant to such section, be reduced below zero.

[1481] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

unemployment account pursuant to section 1203 of such Act, and

(C) any payment made from the Federal Employees Compensation Account (as established under section 909 of such Act) for the purpose of carrying out chapter 85 of title 5, United States Code, and funds appropriated or transferred to or otherwise deposited in such Account,

shall not be subject to reduction.

(2)(A) A State may reduce each weekly benefit payment made under the Federal-State Extended Unemployment Compensation Act of 1970 for any week of unemployment occurring during any period with respect to which payments are reduced under an order issued under section 254[1482] by a percentage not to exceed the percentage by which the Federal payment to the State under section 204 of such Act is to be reduced for such week as a result of such order.

(B) A reduction by a State in accordance with subparagraph (A) shall not be considered as a failure to fulfill the requirements of section 3304(a)(11) of the Internal Revenue Code of 1954.

(j) COMMODITY CREDIT CORPORATION. --

(1) POWERS AND AUTHORITIES OF THE COMMODITY CREDIT CORPORATION. -- This title shall not restrict the Commodity Credit Corporation in the discharge of its authority and responsibility as a corporation to buy and sell commodities in world trade, to use the proceeds as a revolving fund to meet other obligations and otherwise operate as a cor-

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[1482] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

poration, the purpose for which it was created.

(2) REDUCTION IN PAYMENTS MADE UNDER CONTRACTS. --

(A) Payments and loan eligibility under any contract entered into with a person by the Commodity Credit Corporation prior to the time an order has been issued under section 254[1483] shall not be reduced by an order subsequently issued. Subject to subparagraph (B), after an order is issued under such section for a fiscal year, any cash payments made by the Commodity Credit Corporation --

(i) under the terms of any one-year contract entered into in such fiscal year and after the issuance of the order; and

(ii) out of an entitlement[1484] account,[1485]

to any person (including any producer, lender, or guarantee entity) shall be subject to reduction under the order.

(B) Each contract entered into with producers or producer cooperatives with respect to a particular crop of a commodity and subject to reduction under subparagraph (A) shall be reduced in accordance with the same terms and conditions. If some, but not all, contracts applicable to a crop of a commodity

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[1483] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

[1484] Section 3(9) of the Congressional Budget Act (*see supra* p. 18) defines "entitlement authority" to mean (at least for purposes of that Act) the authority described in section 401(c)(2)(C) of that Act (*see supra* p. 204). Section 250(c)(18) of Gramm-Rudman-Hollings (*see supra* p. 378) provides that all references to entitlement authority shall include the mandatory appropriations accounts listed *supra* note 1162.

[1485] Section 250(c)(11) defines "account." *See supra* p. 377.

have been entered into prior to the issuance of an order under section 254,[1486] the order shall provide that the necessary reduction in payments under contracts applicable to the commodity be uniformly applied to all contracts for the next succeeding crop of the commodity, under the authority provided in paragraph (3).

(3) DELAYED REDUCTION IN OUTLAYS[1487] PERMISSIBLE. -- Notwithstanding any other provision of this joint resolution, if an order under section 254[1488] is issued with respect to a fiscal year, any reduction under the order applicable to contracts described in paragraph (1) may provide for reductions in outlays for the account[1489] involved to occur in the fiscal year following the fiscal year to which the order applies. No other account, or other program, project, or activity, shall bear an increased reduction for the fiscal year to which the order applies as a result of the operation of the preceding sentence.

(4) UNIFORM PERCENTAGE RATE OF REDUCTION AND OTHER LIMITATIONS. -- All reductions described in paragraph (2) which are required to be made in connection with an order issued under section 254[1490] with respect to a fiscal year --

(A) shall be made so as to ensure that out-

[1486] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

[1487] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1488] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

[1489] Section 250(c)(11) defines "account." *See supra* p. 377.

[1490] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

lays[1491] for each program, project, activity, or account[1492] involved are reduced by a percentage rate that is uniform for all such programs, projects, activities, and accounts, and may not be made so as to achieve a percentage rate of reduction in any such item exceeding the rate specified in the order; and

(B) with respect to commodity price support and income protection programs, shall be made in such manner and under such procedures as will attempt to ensure that --

(i) uncertainty as to the scope of benefits under any such program is minimized;

(ii) any instability in market prices for agricultural commodities resulting from the reduction is minimized; and

(iii) normal production and marketing relationships among agricultural commodities (including both contract and non-contract commodities) are not distorted.

In meeting the criterion set out in clause (iii) of subparagraph (B) of the preceding sentence, the President shall take into consideration that reductions under an order may apply to programs for two or more agricultural commodities that use the same type of production or marketing resources or that are alternative commodities among which a producer could choose in making annual production decisions.

(5) NO DOUBLE REDUCTION. -- No agricultural price sup-

[1491] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1492] Section 250(c)(11) defines "account." *See supra* p. 377.

port or income protection program that is subject to reduction under an order issued under section 254[1493] for a fiscal year may be subject, as well, to modification or suspension under such order as an automatic spending increase.

(6) CERTAIN AUTHORITY NOT TO BE LIMITED. -- Nothing in this joint resolution shall limit or reduce, in any way, any appropriation that provides the Commodity Credit Corporation with budget authority[1494] to cover the Corporation's net realized losses.

(k)[1495] SPECIAL RULES FOR THE JOBS PORTION OF AFDC. --

(1) FULL AMOUNT OF SEQUESTRATION[1496] REQUIRED. -- Any order issued by the President under section 254 shall accomplish the full amount of any required sequestration of the job opportunities and basic skills training program under section 402(a)(19), and part F of title VI, of the Social Security Act, in the manner specified in this subsection. Such an order may not reduce any Federal matching rate pursuant to section 403(l) of the Social Security Act.

(2) NEW ALLOTMENT FORMULA. --

(A) GENERAL RULE. -- Notwithstanding section 403(k) of the Social Security Act, each State's percentage share of the amount available after

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[1493] Section 13101(d)(3) of the Budget Enforcement Act changed this reference from one to section 252 to one to section 254, so that it would continue to refer to the section dealing with orders. *See infra* p. 620.

[1494] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" at least in part by reference to the definition of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1495] Section 13101(d)(2) of the Budget Enforcement Act added what is now subsection (k) (and, so as to put the subsections of section 255 in the order that they take would effect, moved what used to be subsection (k) to be what is now subsection (e)). *See infra* p. 620.

[1496] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

sequestration[1497] for direct spending[1498] pursuant to section 403(l) of such Act for the fiscal year to which the sequestration applies shall be equal to --

(i) the lesser of --

(I) that percentage of the total amount paid to the States pursuant to such section 403(l) for the prior fiscal year that is represented by the amount paid to such State pursuant to such section 403(l) for the prior fiscal year; or

(II) the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration[1499] not been in effect.

(B) REALLOTMENT OF AMOUNTS REMAINING UNALLOTTED AFTER APPLICATION OF GENERAL RULE. -- Any amount made available after sequestration[1500] for direct spending[1501] pursuant to section 403(l) of the Social Security Act for the fiscal year to which the sequestration applies that remains unallotted as a result of subparagraph (A) of this paragraph shall be allotted among the States in proportion to the absolute difference between the amount allotted, respectively, to each State as a result of such subparagraph and the amount that would have been allotted to such State pursuant to section 403(k) of such Act had the sequestration not been in effect, except that a State

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[1497] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1498] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1499] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1500] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1501] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

may not be allotted an amount under this subparagraph that results in a total allotment to the State under this paragraph of more than the amount that would have been allotted to such State pursuant to such section 403(k) had the sequestration not been in effect.

(l)[1502] EFFECTS OF SEQUESTRATION.[1503] -- The effects of sequestration shall be as follows:

(1) Budgetary resources[1504] sequestered[1505] from any account[1506] other than a trust or special fund account shall be permanently cancelled.

(2) Except as otherwise provided, the same percentage sequestration[1507] shall apply to all programs, projects, and activities within a budget account[1508] (with programs, projects, and activities as delineated in the appropriation Act or accompanying report for the relevant fiscal year covering that account, or for accounts not included in appropriation Acts, as delineated in the most recently submitted President's budget).

(3) Administrative regulations or similar actions

[1502] Section 13101(d)(2) of the Budget Enforcement Act added what is now subsection (l) and repealed what used to be subsection (l). *See infra* p. 620. Before the enactment of the Budget Enforcement Act, subsection (l) read as follows:

> (l) TREATMENT OF OBLIGATED BALANCES. -- Obligated balances shall not be subject to reduction under an order issued under section 252.

[1503] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1504] Section 250(c)(6) defines "budgetary resources." *See supra* p. 375.

[1505] Section 250(c)(2) defines "sequester." *See supra* p. 372.

[1506] Section 250(c)(11) defines "account." *See supra* p. 377.

[1507] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1508] Section 250(c)(11) defines "account." *See supra* p. 377.

implementing a sequestration[1509] shall be made within 120 days of the sequestration order. To the extent that formula allocations differ at different levels of budgetary resources[1510] within an account,[1511] program, project, or activity, the sequestration shall be interpreted as producing a lower total appropriation, with the remaining amount of the appropriation being obligated in a manner consistent with program allocation formulas in substantive law.

(4) Except as otherwise provided, obligations in sequestered[1512] accounts[1513] shall be reduced only in the fiscal year in which a sequester occurs.

(5) If an automatic spending increase is sequestered,[1514] the increase (in the applicable index) that was disregarded as a result of that sequestration[1515] shall not be taken into account[1516] in any subsequent fiscal year.

(6) Except as otherwise provided, sequestration[1517] in trust and special fund accounts[1518] for which obligations are indefinite shall be taken in a manner to ensure that obligations in the fiscal year of a sequestration are reduced, from the level that would actually have occurred, by

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[1509] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1510] Section 250(c)(6) defines "budgetary resources." *See supra* p. 375.

[1511] Section 250(c)(11) defines "account." *See supra* p. 377.

[1512] Section 250(c)(2) defines "sequester." *See supra* p. 372.

[1513] Section 250(c)(11) defines "account." *See supra* p. 377.

[1514] Section 250(c)(2) defines "sequester." *See supra* p. 372.

[1515] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1516] Section 250(c)(11) defines "account." *See supra* p. 377.

[1517] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1518] Section 250(c)(11) defines "account." *See supra* p. 377.

the applicable sequestration percentage.

SEC. 257. THE BASELINE.[1519]

(a) IN GENERAL. -- For any budget year,[1520] the baseline refers to a projection of current-year[1521] levels of new budget authority,[1522] outlays,[1523] revenues, and the surplus or deficit[1524] into the budget year and the outyears[1525] based on laws enacted through the applicable date.

(b) DIRECT SPENDING[1526] AND RECEIPTS. -- For the budget year[1527] and each outyear,[1528] the baseline shall be calculated using the following assumptions:

(1) IN GENERAL. -- Laws providing or creating direct spending[1529] and receipts are assumed to operate in the manner specified in those laws for each such year and

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[1519] Section 250(c) (*see supra* p. 374) defines "baseline" in substantial part by reference to section 257. For legislative history of section 257, see *infra* note 1565 (at the end of this section).

[1520] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1521] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1522] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1523] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1524] Section 250(c)(1) (*see supra* p. 372) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1525] Section 250(c)(14) defines "outyear." *See supra* p. 377.

[1526] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

[1527] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1528] Section 250(c)(14) defines "outyear." *See supra* p. 377.

[1529] Section 250(c)(8) defines "direct spending." *See supra* p. 376.

funding for entitlement authority[1530] is assumed to be adequate to make all payments required by those laws.

(2) Exceptions. -- (A) No program with estimated current-year[1531] outlays[1532] greater than $50 million shall be assumed to expire in the budget year[1533] or outyears.[1534]

(B) The increase for veterans' compensation for a fiscal year is assumed to be the same as that required by law for veterans' pensions unless otherwise provided by law enacted in that session.

(C) Excise taxes dedicated to a trust fund, if expiring, are assumed to be extended at current[1535] rates.

(3) Hospital insurance trust fund. -- Notwithstanding any other provision of law, the receipts and disbursements of the Hospital Insurance Trust Fund shall be included in all calculations required by this Act.[1536]

[1530] Section 3(9) of the Congressional Budget Act (*see supra* p. 18) defines "entitlement authority" to mean (at least for purposes of that Act) the authority described in section 401(c)(2)(C) of that Act (*see supra* p. 204). Section 250(c)(18) of Gramm-Rudman-Hollings (*see supra* p. 378) provides that all references to entitlement authority shall include the mandatory appropriations accounts listed *supra* note 1162.

[1531] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1532] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1533] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1534] Section 250(c)(14) defines "outyear." *See supra* p. 377.

[1535] Section 250(c)(9) defines "current." *See supra* p. 376.

[1536] The "notwithstanding" clause of this paragraph refers to (perhaps among other provisions) section 710(a) of the Social Security Act, which was intended to take the Medicare Hospital Insurance Trust Fund off budget beginning with fiscal year 1993.

Through fiscal year 1992, section 710(a) of the Social Security Act provides:

§ 911. Budgetary treatment of trust fund operations

(continued...)

[1536] (...continued)

> **(a) Federal Old-Age and Survivors Insurance Trust Fund; Federal Disability Insurance Trust Fund**
>
> The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, and the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of Title 26, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

42 U.S.C. § 911(a) (1988).

Beginning with fiscal year 1993, section 710(a) will also apply to the Medicare Hospital Insurance Trust Fund. In the following quotation of section 710(a) as it will appear beginning in fiscal year 1993, additions to the version of section 710(a) in force through fiscal year 1992 appear in *italic*, while deletions appear in ~~strikeout~~.

> (a)*(1)* The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund, ~~and~~ the Federal Disability Insurance Trust Fund, *and the Federal Hospital Insurance Trust Fund* and the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of Title 26~~,~~ shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.
>
> *(2) No provision of law enacted after December 12, 1985 (other than a provision of an appropriation Act that appropriates funds authorized under this chapter as in effect on December 12, 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in paragraph (1) or for payments from any such Trust Fund to the general fund of the Treasury.*

42 U.S.C. § 911(a) (1988).

Section 346(b) of the Social Security Amendments of 1983, Pub. L. 98-21, tit. III, § 346(b), 97 Stat. 138 (Apr. 20, 1983), and section 261(b) of Gramm-Rudman-Hollings (*see infra* pp. 589-589) require the text of section 710(a) to change effective for fiscal years beginning with fiscal year 1993.

Note that one could read the provisions of section 406(a) of the Congressional Budget Act, which apply "[n]otwithstanding any other provision of law," to conflict with section 710(a) and to require the Medicare Hospital Insurance Trust Fund to appear on budget even after fiscal year 1992. *See supra* pp. 221-222. Section 214 of Gramm-Rudman-Hollings added section 406(a) of the Congressional Budget Act on the same date as the last amendments to section 710(a). *See supra* p. 350.

Does section 257(b)(3) affect the calculations required by the Congressional Budget

(continued...)

[1536] (...continued)
Act, or does it create definitions for purposes of Gramm-Rudman-Hollings that differ from those for purposes of the Congressional Budget Act? Note that section 250(c)(1) of Gramm-Rudman-Hollings refers to this paragraph in defining several key terms for purposes of part C of Gramm-Rudman-Hollings:

> The terms "budget authority", "new budget authority", "outlays", and "deficit" have the meanings given to such terms in section 3 of the Congressional Budget and Impoundment Control Act of 1974 (but including the treatment specified in section 257(b)(3) of the Hospital Insurance Trust Fund) . . . .

See supra p. 372.

Section 257(b)(3) of Gramm-Rudman-Hollings provides that, notwithstanding section 710(a) of the Social Security Act, the Hospital Insurance Trust Fund shall be included in all calculations required by Gramm-Rudman-Hollings. Gramm-Rudman-Hollings amended the Congressional Budget Act to prohibit budget resolutions and other legislation in the Senate from exceeding the maximum deficit amount. (Section 201(b) of Gramm-Rudman-Hollings, *see supra* p. 345, amended section 301(i) of the Congressional Budget Act to apply the maximum deficit amount point of order to budget resolutions, and the substance of that amendment continues today in sections 606(b) and 606(c) of the Congressional Budget Act. *See supra* pp. 274-276. Section 201(b) of Gramm-Rudman-Hollings, *see supra* p. 345, also amended section 311(a) of the Congressional Budget Act to apply the maximum deficit amount point of order to legislation generally in the Senate, and the substance of that amendment continues today in section 605(b) of the Congressional Budget Act. *See supra* p. 271.) Thus section 257(b)(3) of Gramm-Rudman-Hollings provides that, notwithstanding section 710(a) of the Social Security Act, the Hospital Insurance Trust Fund shall be included in all calculations required for sections 605(b), 606(b), and 606(c) of the Congressional Budget Act. To comply with this requirement, budget resolutions should display a deficit figure that includes the Hospital Insurance Trust Fund.

Should a Medicare functional category in budget resolutions display a figure that includes the Hospital Insurance Trust Fund? Section 710(b) of the Social Security Act addresses the point. Through fiscal year 1992, section 710(b) of the Social Security Act provides:

> **(b) Federal Hospital Insurance Trust Fund; Federal Supplementary Medical Insurance Trust Fund**
>
> The disbursements of the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Funds, including the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of Title 26, shall be set forth separately in such budgets.

42 U.S.C. § 911(b) (1988).

Beginning with fiscal year 1993, section 710(b) will apply solely to the Supplementary

(continued...)

[1536](...continued)
Medical Insurance Trust Fund. In the following quotation of section 710(b) as it will appear beginning in fiscal year 1993, additions to the version of section 710(b) in force through fiscal year 1992 appear in *italic*, while deletions appear in ~~strikeout~~.

> The disbursements of the ~~Federal Hospital Insurance Trust Fund and the~~ Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust *Fund* ~~Funds, including the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of Title 26,~~ shall be set forth separately in such budgets.

42 U.S.C. § 911(a) (1988).

Thus in enacting section 710(b) of the Social Security Act, Congress anticipated that, beginning with fiscal year 1993, the Medicare Hospital Insurance Trust Fund would not appear in the same functional display as it had prior to that year. As this functional display is not a calculation required by Gramm-Rudman-Hollings, section 257(b)(3) of Gramm-Rudman-Hollings would not appear to require the inclusion of the Hospital Insurance Trust Fund notwithstanding section 710(b) of the Social Security Act. Thus the two intents of these laws would seem to be best reconciled by excluding the Medicare Hospital Insurance Trust Fund from the functional numbers beginning in fiscal year 1993. Congress gave the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds this treatment in budget resolutions covering fiscal years 1987 through 1991. During those years, the conflict of the Social Security Act and Gramm-Rudman-Hollings posed a similar question for those Social Security trust funds.

Neither section 710(b) of the Social Security Act nor the Congressional Budget Act, however, explicitly prohibits Congress from setting forth additional data on the Medicare Hospital Insurance Trust Fund in budget resolutions in fiscal year 1993 and after. This data simply cannot be included in the totals of the budget resolution (except to the extent necessary to demonstrate compliance with Gramm-Rudman-Hollings's maximum deficit amounts) and cannot be included in the same functional category with the Federal Supplementary Medical Insurance Trust Fund. Although it would run counter to the spirit of section 710(b) of the Social Security Act, Congress could set forth a new functional category for the Medicare Hospital Insurance Trust Fund in addition to the statutorily mandated functional category for the Federal Supplementary Medical Insurance Trust Fund.

In fiscal year 1993 and after, should budget resolutions also display a deficit figure that excludes the Hospital Insurance Trust Fund? Once again invoking the spirit of section 710 of the Social Security Act, it would seem that Congress looked forward to such a display when it enacted that Act. Once again, as this display is not a calculation required by Gramm-Rudman-Hollings, section 257(b)(3) of Gramm-Rudman-Hollings would not appear to require the inclusion of the Hospital Insurance Trust Fund notwithstanding section 710 of the Social Security Act. Thus the two intents of these laws would seem to be best reconciled for fiscal year 1993 and after by setting forth totals for budget resolutions in fiscal year 1993 and after that *included* the Medicare Hospital Insurance Trust Fund as well as totals that *excluded* the Medicare Hospital Insurance Trust Fund. Lest the reader complain that this display would appear somewhat schizophrenic (which it would), note

(continued...)

(c) DISCRETIONARY APPROPRIATIONS.[1537] -- For the budget year[1538] and each outyear,[1539] the baseline shall be calculated using the following assumptions regarding all amounts other than those covered by subsection (b):

> **(1) INFLATION OF CURRENT-YEAR[1540] APPROPRIATIONS. -- Budgetary resources[1541] other than unobligated balances shall be at the level provided for the budget year[1542] in full-year appropriation Acts. If for any account[1543] a full-year appropriation has not yet been enacted, budgetary resources other than unobligated balances shall be at the**

[1536](...continued)
that Congress's practice with regard to budget resolutions covering fiscal years 1987 through 1991 has been to include revenue, outlay, and deficit totals both including and excluding the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds. *See* sections 2 and 3(a) of the Concurrent Resolution on the Budget -- Fiscal Year 1991 (H. Con. Res. 310), H.R. Conf. Rep. No. 101-820, 101st Cong., 2d Sess. (1990); sections 2 and 3(a) of the Concurrent Resolution on the Budget -- Fiscal Year 1990 (H. Con. Res. 106), H.R. Conf. Rep. No. 101-50, 101st Cong., 1st Sess. (1989); sections 2 and 3(a) of the Concurrent Resolution on the Budget -- Fiscal Year 1989 (H. Con. Res. 268), H.R. Conf. Rep. 100-658, 100th Cong., 2d Sess. (1988); sections 2 and 3(a) of the Concurrent Resolution on the Budget -- Fiscal Year 1988 (H. Con. Res. 93), S. Conf. Rep. 100-76, 100th Cong., 1st Sess. (1987); and subsections (a) and (b) of the Concurrent Resolution on the Budget -- Fiscal Year 1987 (S. Con. Res. 120), H. Conf. Rep. 99-664, 99th Cong., 2d Sess. (1986).

On the subject of the budgetary treatment of Social Security, see generally SENATE COMM. ON THE BUDGET, SOCIAL SECURITY PRESERVATION ACT, S. REP. No. 101-426, 101st Cong., 2d Sess. (1990) (the Budget Enforcement Act incorporated the major provisions of the Social Security Preservation Act reported by the Senate Budget Committee).

[1537] Section 250(c)(7) defines "discretionary appropriations." *See supra* p. 375.

[1538] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1539] Section 250(c)(14) defines "outyear." *See supra* p. 377.

[1540] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1541] Section 250(c)(6) defines "budgetary resources." *See supra* p. 375.

[1542] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1543] Section 250(c)(11) defines "account." *See supra* p. 377.

level available in the current year,[1544] adjusted sequentially and cumulatively for expiring housing contracts as specified in paragraph (2), for social insurance administrative expenses as specified in paragraph (3), to offset pay absorption and for pay annualization as specified in paragraph (4), for inflation as specified in paragraph (5), and to account for changes required by law in the level of agency payments for personnel benefits other than pay.

(2) EXPIRING HOUSING CONTRACTS. -- New budget authority[1545] to renew expiring multiyear subsidized housing contracts shall be adjusted to reflect the difference in the number of such contracts that are scheduled to expire in that fiscal year and the number expiring in the current year,[1546] with the per-contract renewal cost equal to the average current-year cost of renewal contracts.

(3) SOCIAL INSURANCE ADMINISTRATIVE EXPENSES. -- Budgetary resources[1547] for the administrative expenses of the following trust funds shall be adjusted by the percentage change in the beneficiary population from the current year[1548] to that fiscal year: the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account.[1549]

(4) PAY ANNUALIZATION; OFFSET TO PAY ABSORPTION. --

[1544] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1545] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1546] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1547] Section 250(c)(6) defines "budgetary resources." *See supra* p. 375.

[1548] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1549] Section 250(c)(11) defines "account." *See supra* p. 377.

Current-year[1550] new budget authority[1551] for Federal employees shall be adjusted to reflect the full 12-month costs (without absorption) of any pay adjustment that occurred in that fiscal year.

(5) INFLATORS. -- The inflator used in paragraph (1) to adjust budgetary resources[1552] relating to personnel shall be the percent by which the average of the Bureau of Labor Statistics Employment Cost Index (wages and salaries, private industry workers) for that fiscal year differs from such index for the current year.[1553] The inflator used in paragraph (1) to adjust all other budgetary resources shall be the percent by which the average of the estimated gross national product fixed-weight price index for that fiscal year differs from the average of such estimated index for the current year.

(6) CURRENT-YEAR[1554] APPROPRIATIONS. -- If, for any account,[1555] a continuing appropriation is in effect for less than the entire current year, then the current-year amount shall be assumed to equal the amount that would be available if that continuing appropriation covered the entire fiscal year. If law permits the transfer of budget authority[1556] among budget accounts in the current year, the current-year level for an account shall reflect transfers

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[1550] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1551] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1552] Section 250(c)(6) defines "budgetary resources." *See supra* p. 375.

[1553] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1554] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1555] Section 250(c)(11) defines "account." *See supra* p. 377.

[1556] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" at least in part by reference to the definition of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

accomplished by the submission of, or assumed for the current year in, the President's original budget for the budget year.[1557]

(d) UP-TO-DATE CONCEPTS. -- In deriving the baseline for any budget year[1558] or outyear,[1559] current-year[1560] amounts shall be calculated using the concepts and definitions that are required for that budget year.

(e)[1561] The sale of an asset[1562] or prepayment of a loan[1563] shall not alter the deficit[1564] or produce any net deficit reduction in the budget baseline, except that the budget baseline estimate shall include asset sales mandated by law before September 18, 1987, and routine, ongoing asset sales and loan prepayments at levels consistent with agency operations in fiscal year 1986;[1565]

[1557] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1558] Section 250(c)(12) defines "budget year." *See supra* p. 377.

[1559] Section 250(c)(14) defines "outyear." *See supra* p. 377.

[1560] Section 250(c)(13) defines "current year." *See supra* p. 377.

[1561] Section 13101(e)(2) of the Budget Enforcement Act transferred subsection (e) to where it is now from section 251(a)(6)(I) of Gramm-Rudman-Hollings (as it existed before enactment of the Budget Enforcement Act), struck the introductory clause ("assuming, for purposes of this paragraph and subparagraph (A)(i) of paragraph (3), that"), and capitalized the first word. *See infra* p. 621. For the complete text of section 251(a)(6) of Gramm-Rudman-Hollings as it existed before enactment of the Budget Enforcement Act, see *supra* note 1565.

[1562] Section 250(c)(21) defines "the sale of an asset." *See supra* p. 379.

[1563] Section 250(c)(21) defines "prepayment of a loan." *See supra* p. 379.

[1564] Section 250(c)(1) (*see supra* p. 372) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1565] This is so in the original. When section 13101(e)(2) of the Budget Enforcement Act transferred subsection (e) to where it is now from section 251(a)(6)(I) of Gramm-Rudman-Hollings, it neglected to change the final semicolon to a period. *See infra* p. 621.

Section 13101(e) of the Budget Enforcement Act amended section 257 to read as it

(continued...)

[1565](...continued)
does now. *See infra* p. 621. Before enactment of the Budget Enforcement Act, section 257 dealt with definitions. Section 13101(a) of the Budget Enforcement Act (*see infra* p. 617) added a new section 250(c) of Gramm-Rudman-Hollings (*see supra* pp. 372-379) that sets forth definitions. For the text of section 257 as it read before enactment of the Budget Enforcement Act, see *supra* note 1117.

Before enactment of the Budget Enforcement Act, section 251(a)(6) of Gramm-Rudman-Hollings set forth the requirements for the budget baseline as follows:

> (6) BUDGET BASELINE. -- In estimating the deficit excess and net deficit reduction in the budget baseline and in computing the amounts and percentages by which accounts must be reduced during a fiscal year as set forth in any report required under this subsection for such fiscal year, the budget baseline shall be determined by --
>
> (A) assuming (subject to subparagraph (B)) the continuation of current revenue law and, in the case of spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974, funding for current law at levels sufficient to fully make all payments required under such law;
>
> (B) assuming that expiring provisions of law providing revenues and spending authority as defined in section 401(c)(2) of the Congressional Budget Act of 1974 do expire, except that excise taxes dedicated to a trust fund, and agricultural price support programs administered through the Commodity Credit Corporation are extended at current rates, contract authority for transportation trust funds is extended at current levels, and that authority to provide insurance through the Federal Housing Administration Fund is continued;
>
> (C) in the case of all accounts to which subparagraph (A) does not apply --
>
> (i) assuming for an account (except as provided by clause (ii)), appropriations at the level specified in enacted annual appropriations or continuing appropriations enacted for the entire fiscal year, and in addition, estimates of appropriations to cover the costs of Federal pay adjustments as set forth in subparagraph (D)(ii) (unless funding for such pay adjustments are provided for in such measure as explained in the joint explanatory statement of managers accompanying such appropriations);
>
> (ii) assuming, if no annual appropriations or continuing appropriations for the entire fiscal year have been enacted for an account, subject to subparagraph (D)(iii), appropriations at the level provided for the previous fiscal year,

(continued...)

[1565](...continued)

(I) adjusted to reflect the full 12-month costs (without absorption) of the pay adjustment that occurred in such fiscal year,

(II) inflated as specified in subparagraph (D)(i), and

~~(III) inc~~reased to cover the increased costs to agencies of personnel benefits (other than pay) required by law;

(D)(i) as required by subparagraph (C)(ii)(II), assuming that the inflator shall equal --

(I) in the case of fiscal year 1988 --

(aa) for personnel costs, the rate of Federal pay adjustments for statutory pay systems and elements of military pay if such adjustments have been enacted into law or (on or after October 1 of the fiscal year) have been established pursuant to law for such fiscal year or, if not, 4.2 percent, multiplied by the proportion of the fiscal year for which the pay adjustments will be effective, multiplied by 78 percent; and

(bb) for all other costs, 4.2 percent;

(II) in the case of fiscal year 1989 and subsequent fiscal years --

(aa) for 70 percent of personnel costs, the rate of Federal pay adjustments for statutory pay systems and elements of military pay if such adjustments have been enacted into law or (on or after October 1 of the fiscal year) have been established pursuant to law for such fiscal year or, if not, at the inflation rate specified in subclause (II)(bb), multiplied by the proportion of the fiscal year for which the pay adjustments will be effective, multiplied by 78 percent; and

(bb) for all other costs, the percentage by which the average of the estimated gross national product implicit price deflator for such fiscal year exceeds the average of such estimated deflator for the prior fiscal year (and the Director of OMB shall use such percentage as estimated in the budget submitted by the President under section 1105(a) for such fiscal year, but such use shall not constrain the

(continued...)

[1565](...continued)

economic assumptions the Director may use under paragraph (2)(C));

(ii) if required by subparagraph (C)(i), assuming appropriations for a fiscal year in an amount sufficient to --

(I) cover any Federal pay adjustment for statutory pay systems (including associated adjustments in benefit costs) if such adjustments have been enacted into law or, on or after October 1 of the fiscal year, have been established pursuant to law for such fiscal year;

(II) cover any pay adjustments for elements of military pay (including associated adjustments in benefit costs) if such adjustments are specifically enacted into law or occur pursuant to adjustments for statutory pay systems if such adjustments have been enacted into law or, on or after October 1 of the fiscal year, have been established pursuant to law;

reduced by 22 percent;

(iii) assuming for the purposes of subparagraph (C)(ii) that the amount provided for an account for the previous fiscal year is the amount provided in any enacted annual appropriations or continuing appropriations enacted for the entire fiscal year, as modified by any enacted supplemental appropriations or rescission bills, and if a temporary continuing appropriation is in effect for the previous fiscal year, then the amount provided for such account for the previous fiscal year shall be assumed to be the amount that would have been enacted if such continuing appropriations were in effect for the entire fiscal year;

(E) assuming that medicare spending levels for inpatient hospital services will be based upon the regulations most recently issued in final form or proposed by the Health Care Financing Administration pursuant to sections 1886(b)(3)(B), 1886(d)(3)(A), and 1886(e)(4) of the Social Security Act;

(F) assuming that, unless otherwise required by law, advance deficiency payments and paid land diversion payments under the Agricultural Act of 1949 will be made in accordance with applicable regulations and payment rates for 1987;

(G) assuming that the increase in revenues attributable to any increase in appropriations available for administration and enforcement of the Internal Revenue Code of 1986 (over the amount actually

(continued...)

[1565](...continued)

appropriated for the previous fiscal year) is consistent on a proportional basis with the increase in revenues projected to result from the increased appropriations for such purposes in the budget submitted under section 1105(a) of title 31, United States Code, for such fiscal year;

(H) assuming, unless otherwise provided by law, that the increase for Veterans' compensation (36-0153-0-1-701) for a fiscal year will be the same as that required by law for Veterans' pensions;

(I) assuming, for purposes of this paragraph and subparagraph (A)(i) of paragraph (3), that the sale of an asset or prepayment of a loan shall not alter the deficit or produce any net deficit reduction in the budget baseline, except that the budget baseline estimate shall include asset sales mandated by law before September 18, 1987, and routine, ongoing asset sales and loan prepayments at levels consistent with agency operations in fiscal year 1986;

(J) assuming that deferrals proposed during the period beginning October 1 of such fiscal year and ending with the snapshot date for such fiscal year shall not be taken into account in determining such budget baseline; and

(K) assuming that the transfer of Government actions from one fiscal year to another fiscal year, as described in section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, shall not be taken into account except to the extent provided in such section.

Terms used in this paragraph shall have the meanings defined in sections 256 and 257 [which then dealt with definitions].

SEC. 258. SUSPENSION IN THE EVENT OF WAR OR LOW GROWTH.[1566]

(a) PROCEDURES IN THE EVENT OF A LOW GROWTH REPORT. --

(1) TRIGGER. -- Whenever CBO issues a low-growth report under section 254(j), the Majority Leader of the House of Representatives may, and the Majority Leader of the Senate shall, introduce a joint resolution[1567] (in the form set forth in paragraph (2)) declaring that the conditions specified in section 254(j) are met and suspending the relevant provisions of this title, titles III and VI of the Congressional Budget Act of 1974, and section 1103[1568] of title 31, United States Code.[1569]

[1566] Section 13101(f) of the Budget Enforcement Act added this section 258 as it reads now. *See infra* p. 621. In a drafting error, however, section 13101(f) of the Budget Enforcement Act failed to repeal the section 258 of Gramm-Rudman-Hollings that existed before the enactment of the Budget Enforcement Act. *See id.* That Congress intended to repeal the old section 258 is evident from the subject matter of that section -- modification of the President's sequester order. Section 13101(f) of the Budget Enforcement Act also adds a new section 258A of Gramm-Rudman-Hollings that deals with the same subject in nearly the same language. (Compare the language of the new section 258A (*see infra* pp. 557-561) with the language of the old section 258. *See infra* note 1584.) To the extent that provisions of the new section 258A conflict with those of the old section 258, the provisions of the later-enacted section 258A would control. Consequently, to avoid confusion, this volume sets forth the old section 258 *infra* note 1584, even though Congress has not explicitly repealed it. For additional legislative history on the matter now covered by section 258, see *infra* note 552 (at the end of this section).

[1567] On January 23, 1991, the Majority Leader introduced such a resolution, S.J. RES. 44, 102d Cong., 1st Sess., 137 CONG. REC. S1,053, S1,097-98 (Jan. 23, 1991). The Committee on the Budget reported it unfavorably the next day. 137 CONG. REC. S1,158, D93 (Jan. 24, 1991). The Senate voted 97 to 2 against the resolution. 137 CONG. REC. S1,359 (Jan. 31, 1991). For the debate on that joint resolution, see 137 CONG. REC. S1,346-59 (Jan. 31, 1991).

[1568] This is so in the original; it should be 1105(f). *See infra* note 1575.

[1569] The Chairman of the Budget Committee has likened this trigger procedure to a circuit breaker:

> Mr. President, the issue before the body today is, simply stated, whether to suspend the provisions of the Gramm-Rudman-Hollings law. In

(continued...)

[1569](...continued)
essence, what we are doing today is dealing with a circuit-breaker concept.

As the body knows, a circuit breaker is a mechanical device that automatically interrupts the flow of electric current under an infrequent abnormal condition. The circuit breaker turns off the power to a circuit, or path of electrical energy, whenever too much current surges through the system for it to operate safely. Circuit breakers, as we all know, provide important protection for the home and for the office. Without a circuit breaker, a short circuit could cause extremely high temperatures in the wiring and that could set a house on fire.

The drafters of the Gramm-Rudman-Hollings law prudently built two circuit breakers into that system. One of these circuit breakers is tripped by a Congressional declaration of war. As much as the events of the Middle East weigh heavily on all our minds, here today and indeed on the minds of our countrymen all across this land, we are not here today to address the issue of a declaration of war.

The second circuit breaker in the Gramm-Rudman-Hollings statute is tripped by a forecast of an economic recession or, in the alternative, actual results showing low economic growth for two successive quarters. Specifically, this circuit breaker device is triggered if either the Office of Management and Budget or the Congressional Budget Office projects that real economic growth will be negative for two consecutive quarters during the year-and-a-half starting with the quarter just ended. . . .

I might note, Mr. President, that this circuit breaker can also be triggered by the Department of Commerce which can report that actual real economic growth for the last two quarters came in at less than 1 percent. So there is a distinction. Projected growth has to be negative, but actual growth, as certified by the department of commerce, may also trip the circuit if it is less than 1-percent real growth.

Tripping the Gramm-Rudman-Hollings recession circuit breaker forces the majority leader to introduce a joint resolution, a joint resolution stating that the Gramm-Rudman-Hollings law shall be suspended. The Budget Committee must report on this joint resolution within 5 session days or be discharged. . . .

Following the action of the Senate Budget Committee, the Senate as a whole must vote on this resolution within 5 session days. If the Senate has not voted on it by midnight of the fifth day, then under a 1986 precedent, the presiding officer must automatically put the question before the body at that time.

The substance of the joint resolution is simple and it is prescribed by statute. If Congress adopts the joint resolution and the President signs it -- or if Congress enacts the joint resolution over the President's veto -- then it will suspend Gramm-Rudman-Hollings's system of reports and orders for fiscal years 1991 and 1992. It would also suspend points of order on spending bills

(continued...)

(2) FORM OF JOINT RESOLUTION. --

(A) The matter after the resolving clause in any joint resolution introduced pursuant to paragraph (1) shall be as follows: "That the Congress declares that the conditions specified in section 254(j) of the Balanced Budget and Emergency Deficit Control Act of 1985 are met, and the implementation of the Congressional Budget and Impoundment Control Act of 1974, chapter 11 of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are modified as described in section 258(b) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

[1569](...continued)
for the same period. All Gramm-Rudman-Hollings procedures would then come back automatically in fiscal year 1993.

> When a circuit breaker shuts off power in our home, it can mean one of two things[.]
>
> One of these conditions is normal; one is not. The first condition may mean we have turned on too many appliances at the same time on the same circuit, that we have connected too many devices to a circuit. Or it may mean that we have a short circuit, which can be very dangerous.
>
> If we just turned on too many appliances at the same time, we go downstairs to the panel of switches and turn the circuit breaker back on. If we have a short circuit, however, we have to call an electrician to troubleshoot and perhaps rework the system.
>
> With the Gramm-Rudman-Hollings recession circuit breaker, the Senate must examine the economic system and vote. If the economic system is basically sound, we should vote to leave the Gramm-Rudman-Hollings structure in place. But, if instead we find the economic system to be in great peril at the moment, then we should vote to suspend the Gramm-Rudman-Hollings rules and take dramatic action to stimulate the economy.
>
> We do not have to rework the system every time the circuit breaker trips. It is merely a device that operates automatically to force us, then, to exercise judgement. And that is precisely what the Senate is being called upon to do this afternoon; to exercise a judgment on the economy.

137 CONG. REC. S1,346-47 (Jan. 31, 1991) (remarks of Sen. Sasser).

(B) The title of the joint resolution shall be "Joint resolution suspending certain provisions of law pursuant to section 258(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985."; and the joint resolution shall not contain any preamble.

(3) COMMITTEE ACTION. -- Each joint resolution introduced pursuant to paragraph (1) shall be referred to the appropriate committees of the House of Representatives or the Committee on the Budget of the Senate,[1570] as the case may be; and such Committee shall report the joint resolution to its House without amendment on or before the fifth day on which such House is in session after the date on which the joint resolution is introduced.[1571] If the Committee fails to report the joint resolution within the five-day period referred to in the preceding sentence, it shall be automatically discharged from further consideration of the joint resolution, and the joint resolution shall be placed on the appropriate calendar.

(4) CONSIDERATION OF JOINT RESOLUTION. --

(A) A vote on final passage of a joint resolution reported to the Senate or discharged pursuant to paragraph (3) shall be taken on or before the close of the fifth calendar day of session after the date on which the joint resolution is reported or after the Committee has been discharged from further consideration of the joint resolution.[1572] If prior to the

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[1570] *See, e.g.*, 137 CONG. REC. S1,053 (Jan. 23, 1991).

[1571] *See, e.g.*, 137 CONG. REC. S1,158, D93 (Jan. 24, 1991).

[1572] If the Senate has not voted on the joint resolution by midnight of the fifth day, then the Chair of its own initiative will call for a vote on the joint resolution at that time. *See* 132 CONG. REC. S12,949-50 (1986); Senate Precedent PRL19860919-001 (Sept. 19, 1986) (LEGIS, Rules database) (inquiry of Democratic Leader Byrd regarding a sequester resolution pursuant to section 274(f)); 132 CONG. REC. S13,086-89 (1986); Senate Precedent PRL19860919-019 (Sept. 19, 1986) (LEGIS, Rules database) (the Chair put the vote). The Chair will call for a vote even if the Senate is on another privileged matter at (continued...)

[1572] (...continued)
midnight of the fifth day. *See* 132 CONG. REC. S12,949-50 (1986); Senate Precedent PRL19860919-001 (Sept. 19, 1986) (LEGIS, Rules database) (inquiry). If the Senate is taking a roll call vote at midnight, the Chair will merely delay calling for a vote on the joint resolution. *See* 132 CONG. REC. S13,086-89 (1986); Senate Precedent PRL19860919-019 (Sept. 19, 1986) (LEGIS, Rules database) (the Chair put the vote at about 12:10 a.m.). It follows that the Chair should rule out of order of its own initiative a motion to adjourn or recess to a time after midnight of the fifth day if the Senate has not yet voted on the joint resolution.

The precedents cited here arose on September 19, 1986, in connection with a joint resolution to implement a sequester under section 274(f) of Gramm-Rudman-Hollings, which provides procedures in the event that a court has invalidated the sequestration procedures under Gramm-Rudman-Hollings. *See infra* pp. 605-606. Section 274(f)(4) (*see infra* p. 606) provides that the procedures that now appear at section 258(a)(4) shall govern such joint resolutions. That day, Democratic Leader Byrd propounded a parliamentary inquiry of the Chair:

> Mr. BYRD. Mr. President, while the distinguished majority leader [Senator Dole] is still on the floor, with respect to the sequester resolution, may I make a parliamentary inquiry?
>
> The PRESIDING OFFICER. The Senator will state it.
>
> Mr. BYRD. What will occur at midnight this day in the event a reconciliation resolution has not been passed by that time or by the close of business today?
>
> The PRESIDING OFFICER. The Chair will put the question on the passage of the sequester resolution.
>
> Mr. BYRD. Would that occur precisely at the hour of midnight?
>
> The PRESIDING OFFICER. If the Senate is in session, yes.
>
> Mr. BYRD. And if the reconciliation measure has not been disposed of or has been disposed of, in either case?
>
> The PRESIDING OFFICER. The Senator is correct.
>
> Mr. BYRD. Does the distinguished majority leader have any question?
>
> Mr. DOLE. I agree with that.

132 CONG. REC. S12,949-50 (Sept. 19, 1986).

Soon after midnight later that day, the following occurred:

> The PRESIDING OFFICER. Under the provisions of Public Law 99-177 [Gramm-Rudman-Hollings], the hour of 12 midnight having arrived,

(continued...)

passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then --

(i) the procedure in that House shall be the same as if no such joint resolution had

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[1572](...continued)
the Senate will now turn to the consideration of Senate Joint Resolution 412 [the sequester resolution].

The clerk will report

The assistant legislative clerk read as follows:

A joint resolution (S.J. Res. 412) complying with the requirements of section 274(f)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985.

Mr. BYRD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the provisions of the Balanced Budget and Emergency Deficit Control Act of 1985, Public Law 99-177, the joint resolution is no longer debatable, nor may it be amended.

The joint resolution will be read for a third time.

The joint resolution was read a third time.

The PRESIDING OFFICER. The question is on final passage of the joint resolution.

The Senator from Florida.

Mr. CHILES. Mr. President, how much time is available now?

Mr. DOLE. None.

The PRESIDING OFFICER. No time is available. All time has expired.

The question is on the passage.

132 CONG. REC. S13,086 (Sept. 19, 1986).

been received from the other House, but

(ii) the vote on final passage shall be on the joint resolution of the other House.

When the joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a House joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a Senate joint resolution agreed to in the Senate) shall cause the joint resolution to be engrossed, certified, and transmitted to the other House of the Congress as soon as practicable.

(B)(i) In the Senate, a joint resolution under this paragraph shall be privileged. It shall not be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(ii) Debate in the Senate on a joint resolution under this paragraph, and all debatable motions and appeals in connection therewith, shall be limited to not more than five hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(iii) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution under this paragraph shall be limited to not more than one hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee.

(iv) A motion in the Senate to further limit debate on a joint resolution under this paragraph is not debatable. A motion to table or to recommit a

joint resolution under this paragraph is not in order.

(C) No amendment to a joint resolution considered under this paragraph shall be in order in the Senate.

(b) SUSPENSION OF SEQUESTRATION[1573] PROCEDURES. -- Upon the enactment of a declaration of war or a joint resolution described in subsection (a) --

(1) the subsequent issuance of any sequestration[1574] report or any sequestration order is precluded;

(2) sections 302(f), 310(d), 311(a), and title VI of the Congressional Budget Act of 1974 are suspended; and

(3) section 1103[1575] of title 31, United States Code, is

[1573] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1574] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1575] This is so in the original; it should be 1105(f). Section 1103 merely reaffirms a congressional commitment:

> **§ 1103. Budget ceiling**
>
> Congress reaffirms its commitment that budget outlays of the United States Government for a fiscal year may be not more than the receipts of the Government for that year.

31 U.S.C. § 1103 (1988).

Section 1105(f), on the other hand, provides:

> (f) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared in a manner consistent with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 that apply to that and subsequent fiscal years.

31 U.S.C. § 1105(f) (as amended by section 13112(c)(2) of the Budget Enforcement Act, *see infra* p. 626).

Note that before enactment of the Budget Enforcement Act, section 254 deal with this subject matter and referred to section 1105(f) of title 31. *See infra* note 552 (at the end of this section).

suspended.[1576]

[1576] Note that this section does not suspend all points of order, or even all points of order requiring 60 votes to waive in the Senate.

The following table displays changes made in the law with regard to suspensions for war and recession. Note that the old law's treatment of war differed from its treatment of recession.

Suspension of
60-Vote Points of Order
for War and Recession

Point of Order Section Number	Under the Old Law		Under the New Law
	Suspend for War	Suspend for Recession	Suspend for Either War or Recession
	Congressional Budget Act sections		
301(i)	X	X	-
302(c)	-	-	-
302(f)	-	X	X
304(b)	X	X	-
305(b)(2)	-	-	-
305(c)(4)	-	-	-
306	-	-	-
310(d)(2)	X	-	X
310(f)	-	-	-
310(g)	-	-	-
311(a)	X	X	X
313	-	-	-
601(b)	-	-	X
606(c)	-	-	X
904(c)	-	-	-
904(d)	-	-	-
	Gramm-Rudman-Hollings sections		
reports	X	X	X
orders	-	X	X
258(a)(4)(C)	-	X	-
258A(b)(3)(C)(i)	-	X	-
258B(f)(1)	-	X	-
258B(h)(1)	-	X	-
258B(h)(3)	-	X	-
258C(a)(5)	-	X	-
258C(b)(1)	-	X	-

(continued...)

(c) RESTORATION OF SEQUESTRATION[1577] PROCEDURES. --

(1) In the event of a suspension of sequestration procedures due to a declaration of war, then, effective with the first fiscal year that begins in the session after the state of war is concluded by Senate ratification of the necessary treaties, the provisions of subsection (b) triggered by that declaration of war are no longer effective.

(2) In the event of a suspension of sequestration[1578] procedures due to the enactment of a joint resolution described in subsection (a), then, effective with regard to the first fiscal year beginning at least 12 months after the enactment of that resolution, the provisions of subsection (b) triggered by that resolution are no longer effective.[1579]

[1576](...continued)

Note that the Budget Enforcement Act changed the nature of the point of order provided by section 301(i) of the Congressional Budget Act, which has been on the list of sections requiring a supermajority to waive since the enactment of Gramm-Rudman-Hollings and remains on the list. Whereas section 301(i) used to provide a point of order against a budget resolution violating the maximum deficit amount (much as section 606(c) of the Congressional Budget Act does now), section 301(i) now provides the Social Security "fire wall" point of order in the Senate, which prohibits the Senate Budget Committee from reporting budget resolutions that would decrease the surplus in the Social Security trust funds.

Note also that section 13112(a)(8) of the Budget Enforcement Act (*see infra* p. 625) repealed what used to be section 304(b), which used to require that revisions of budget resolutions remain within the maximum deficit amount and is on the old list of points of order requiring 60 Senators to waive under section 271(b). Consequently, while violating the maximum deficit amount in this context used to require a supermajority, it no longer does.

[1577] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1578] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1579] Gramm-Rudman-Hollings used to cover the subject matter of the new section 258 by the section 254(a) of Gramm-Rudman-Hollings that existed before the enactment of the Budget Enforcement Act. (Section 13101(a) of the Budget Enforcement Act repealed the old section 254(a). *See infra* p. 617.) The section 254(a) of Gramm-Rudman-Hollings that existed before the enactment of the Budget Enforcement Act read as follows:

(continued...)

[1579](...continued)

(a) SPECIAL PROCEDURES IN THE EVENT OF A RECESSION. --

(1) IN GENERAL. -- The Director of the Congressional Budget Office shall notify the Congress at any time if --

(A) during the period consisting of the quarter during which such notification is given, the quarter preceding such notification, and the four quarters following such notification, such Office or the Office of Management and Budget has determined that real economic growth is projected or estimated to be less than zero with respect to each of any two consecutive quarters within such period, or

(B) the Department of Commerce preliminary reports of actual real economic growth (or any subsequent revision thereof) indicate that the rate of real economic growth for each of the most recent reported quarter and the immediately preceding quarter is less than one percent.

Upon such notification the Majority Leader of each House shall introduce a joint resolution (in the form set forth in paragraph (2)) declaring that the conditions specified in this paragraph are met and suspending the relevant provisions of this title for the remainder of the current fiscal year or for the following fiscal year or both.

(2) FORM OF JOINT RESOLUTION. --

(A) The matter after the resolving clause in any joint resolution introduced pursuant to paragraph (1) shall be as follows:

> "That the Congress declares that the conditions specified in section 254(a)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 are met; and --
>
> "(1) the provisions of sections 3(7), 301(i), 302(f), 304(b), and 311(a) of the Congressional Budget and Impoundment Control Act of 1974, section 1106(c) of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are suspended for the remainder of the current fiscal year, and
>
> "(2) the provisions of sections 3(7), 301(i), 304(b), and 311(a) (insofar as it relates to

(continued...)

[1579] (...continued)

section 3(7)) of the Congressional Budget and Impoundment Control Act of 1974, sections 302(f) and 311(a) (except insofar as it relates to section 3(7)) of that Act (but only if a concurrent resolution on the budget under section 301 of that Act, for the fiscal year following the current fiscal year, has been agreed to prior to the introduction of this joint resolution), sections 1105(f) and 1106(c) of title 31, United States Code, and part C of the Balanced Budget and Emergency Deficit Control Act of 1985 are suspended for the fiscal year following the current fiscal year.

This joint resolution shall not have the effect of suspending any final order which was issued for the current fiscal year under section 252(b) of the Balanced Budget and Emergency Deficit Control Act of 1985 if such order was issued before the date of the enactment of this joint resolution.".

(B) The title of the joint resolution shall be "Joint resolution suspending certain provisions of law pursuant to section 254(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985."; and the joint resolution shall not contain any preamble.

(3) COMMITTEE ACTION. -- Each joint resolution introduced pursuant to paragraph (1) shall be referred to the Committee on the Budget of the House involved; and such Committee shall report the joint resolution to its House without amendment on or before the fifth day on which such House is in session after the date on which the joint resolution is introduced. If the Committee fails to report the joint resolution within the five-day period referred to in the preceding sentence, it shall be automatically discharged from further consideration of the joint resolution, and the joint resolution shall be placed on the appropriate calendar.

(4) CONSIDERATION OF JOINT RESOLUTION. --

(A) A vote on final passage of a joint resolution reported to a House of the Congress or discharged pursuant to paragraph (3) shall be taken on or before the close of the fifth calendar day of session of such House after the date on which the joint resolution is reported to such House or after

(continued...)

[1579](...continued)

the Committee has been discharged from further consideration of the joint resolution. If prior to the passage by one House of a joint resolution of that House, that House receives the same joint resolution from the other House, then --

(i) the procedure in that House shall be the same as if no such joint resolution had been received from the other House, but

(ii) the vote on final passage shall be on the joint resolution of the other House.

When the joint resolution is agreed to, the Clerk of the House of Representatives (in the case of a House joint resolution agreed to in the House of Representatives) or the Secretary of the Senate (in the case of a Senate joint resolution agreed to in the Senate) shall cause the joint resolution to be engrossed, certified, and transmitted to the other House of the Congress as soon as practicable.

(B)(i) A motion in the House of Representatives to proceed to the consideration of a joint resolution under this paragraph shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(ii) Debate in the House of Representatives on a joint resolution under this paragraph shall be limited to not more than five hours, which shall be divided equally between those favoring and those opposing the joint resolution. A motion to postpone, made in the House of Representatives with respect to the consideration of a joint resolution under this paragraph, and a motion to proceed to the consideration of other business, shall not be in order. A motion further to limit debate shall not be debatable. It shall not be in order to move to table or to recommit a joint resolution under this paragraph or to move to reconsider the vote by which the joint resolution is agreed to or disagreed to.

(iii) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to a joint resolution under this paragraph shall be decided without debate.

(iv) Except to the extent specifically provided in the preceding provisions of this subsection or in subparagraph (D), consideration of a joint resolution under this subparagraph shall be governed by the Rules of the House of

(continued...)

[1579](...continued)

Representatives.

(C)(i) A motion in the Senate to proceed to the consideration of a joint resolution under this paragraph shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(ii) Debate in the Senate on a joint resolution under this paragraph, and all debatable motions and appeals in connection therewith, shall be limited to not more than five hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(iii) Debate in the Senate on any debatable motion or appeal in connection with a joint resolution under this paragraph shall be limited to not more than one hour, to be equally divided between, and controlled by, the mover and the manager of the joint resolution, except that in the event the manager of the joint resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee.

(iv) A motion in the Senate to further limit debate on a joint resolution under this paragraph is not debatable. A motion to table or to recommit a joint resolution under this paragraph is not in order.

(D) No amendment to a joint resolution considered under this paragraph shall be in order in either the House of Representatives or the Senate.

SEC. 258A. MODIFICATION OF PRESIDENTIAL ORDER.[1580]

(a) INTRODUCTION OF JOINT RESOLUTION. -- At any time after the Director of OMB[1581] issues a final sequestration[1582] report under section 254 for a fiscal year, but before the close of the twentieth calendar day of the session of Congress beginning after the date of issuance of such report, the majority leader of either House of Congress may introduce a joint resolution which contains provisions directing the President to modify the most recent order issued under section 254 or provide an alternative to reduce the deficit[1583] for such fiscal year. After the introduction of the first such joint resolution in either House of Congress in any calendar year, then no other joint resolution introduced in such House in such calendar year shall be subject to the procedures set forth in this section.

(b) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS. --

[1580] Section 13101(f) of the Budget Enforcement Act added section 258A. *See infra* p. 621. In a drafting error, however, section 13101(f) of the Budget Enforcement Act failed to repeal the section 258 of Gramm-Rudman-Hollings that existed before the enactment of the Budget Enforcement Act. *See id.* That Congress intended to repeal the old section 258 is evident from the subject matter of that section -- modification of the President's sequester order. Compare the language of the new section 258A with the language of the old section 258. *See infra* note 1584 (at the end of this section). To the extent that provisions of the new section 258A conflict with those of the old section 258, the provisions of the later-enacted section 258A would control. Consequently, to avoid confusion, this volume sets forth the old section 258 in a footnote below (*see infra* note 1584), even though Congress has not explicitly repealed it.

[1581] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1582] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1583] Section 250(c)(1) (*see supra* p. 372) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

(1) Referral to committee. -- A joint resolution introduced in the Senate under subsection (a) shall not be referred to a committee of the Senate and shall be placed on the calendar pending disposition of such joint resolution in accordance with this subsection.

(2) Consideration in the senate. -- On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is introduced under subsection (a), notwithstanding any rule or precedent of the Senate, including Rule XXII of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution (to which the motion applies) is introduced. The joint resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

(3) Debate in the senate. --

(A) In the Senate, debate on a joint resolution introduced under subsection (a), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).

(B) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order, and a motion to recommit the joint resolution is not in order.

(C)(i) No amendment that is not germane to the provisions of the joint resolution or to the order issued under section 254 shall be in order in the Senate. In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

(ii) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

(4) VOTE ON FINAL PASSAGE. -- Immediately following the conclusion of the debate on a joint resolution introduced under subsection (a), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under paragraph (3), the vote on final passage of the joint resolution shall occur.

(5) APPEALS. -- Appeals from the decisions of the Chair shall be decided without debate.

(6) Conference reports. -- In the Senate, points of order under titles III, IV, and VI of the Congressional Budget Act of 1974 are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

(7) Resolution from other house. -- If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (a), the Senate receives from the House of Representatives a joint resolution introduced under subsection (a), then the following procedures shall apply:

(A) The joint resolution of the House of Representatives shall not be referred to a committee and shall be placed on the calendar.

(B) With respect to a joint resolution introduced under subsection (a) in the Senate --

(i) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

(ii)(I) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

(II) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.

(C) Upon disposition of the joint resolution

received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

(8) SENATE ACTION ON HOUSE RESOLUTION. -- If the Senate receives from the House of Representatives a joint resolution introduced under subsection (a) after the Senate has disposed of a Senate originated resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.[1584]

[1584] Section 13101(f) of the Budget Enforcement Act added section 258A. *See infra* p. 621. In a drafting error, however, section 13101(f) of the Budget Enforcement Act failed to repeal the section 258 of Gramm-Rudman-Hollings that existed before the enactment of the Budget Enforcement Act. *See id.* That Congress intended to repeal the old section 258 is evident from the subject matter of that section -- modification of the President's sequester order. Compare the language of the new section 258A with the language of the old section 258, below. To the extent that provisions of the new section 258A conflict with those of the old section 258, the provisions of the later-enacted section 258A would control. Consequently, to avoid confusion, this volume sets forth the old section 258 in a footnote below, even though Congress has not explicitly repealed it.

SEC. 258. MODIFICATION OF PRESIDENTIAL ORDER

(a) INTRODUCTION OF JOINT RESOLUTION. -- At any time after the Director of OMB issues a report under section 251(c)(2) for a fiscal year, but before the close of the tenth calendar day of session in that session of Congress beginning after the date of issuance of such report, the majority leader of either House of Congress may introduce a joint resolution which contains provisions directing the President to modify the most recent order issued under section 252 for such fiscal year. After the introduction of the first such joint resolution in either House of Congress in any calendar year, then no other joint resolution introduced in such House in such calendar year shall be subject to the procedures set forth in this section.

(b) PROCEDURES FOR CONSIDERATION OF JOINT RESOLUTIONS. --

(1) NO REFERRAL TO COMMITTEE. -- A joint resolution introduced in the Senate or the House of Representatives under subsection (a) shall not be referred to a committee of the Senate or

(continued...)

[1584](...continued)
the House of Representatives, as the case may be, and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection.

(2) IMMEDIATE CONSIDERATION. -- On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is introduced under subsection (a), notwithstanding any rule or precedent of the Senate, including Rule 22 of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived, except for points of order under titles III or IV of the Congressional Budget Act of 1974. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution (to which the motion applies) is introduced. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the respective House until disposed of.

(3) DEBATE. --

(A) In the Senate, debate on a joint resolution introduced under subsection (a), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees). In the House, general debate on a joint resolution introduced under subsection (a) shall be limited to not more than 4 hours which shall be equally divided between the majority and minority leaders.

(B) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order. In the Senate, a motion to recommit the joint resolution is not in order. In the House, a motion further to limit debate is in order and not debatable. In the House, a motion to recommit is in order.

(continued...)

[1584](...continued)

(C)(i) In the House of Representatives, an amendment and any amendment thereto is debatable for not to exceed 30 minutes to be equally divided between the proponent of the amendment and a Member opposed thereto.

(ii) No amendment that is not germane or relevant to the provisions of the joint resolution or to the order issued under section 252(b)(1) shall be in order in the Senate. In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between the majority leader and the minority leader (or their designees).

(iii) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

(4) VOTE ON FINAL PASSAGE. -- Immediately following the conclusion of the debate on a joint resolution introduced under subsection (a), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, and the disposition of any amendments under paragraph (3) (except for the motion to recommit in the House of Representatives), the vote on final passage of the joint resolution shall occur.

(5) APPEALS. -- Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution described in subsection (a) shall be decided without debate.

(6) CONFERENCE REPORTS. -- In the Senate, points of order under titles III and IV of the Congressional Budget Act of 1974 (including points of order under sections 302(c), 303(a), 306, and 401(b)(1)) are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

(7) RESOLUTION FROM OTHER HOUSE. -- If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (a), the Senate receives from the House of Representatives a joint resolution introduced under subsection (a), then the following procedures shall apply:

(A) The joint resolution of the House of Representatives shall not be referred to a committee.

(continued...)

[1584](...continued)

(B) With respect to a joint resolution introduced under subsection (a) in the Senate --

(i) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

(ii)(I) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

(II) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes it, the Senate shall be considered to have passed the joint resolution as amended by the text of the Senate joint resolution.

(C) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the resolution originated in the Senate.

(8) SENATE ACTION ON HOUSE RESOLUTION. -- If the Senate receives from the House of Representatives a joint resolution introduced under subsection (a) after the Senate has disposed of a Senate originated resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.

SEC. 258B. FLEXIBILITY AMONG DEFENSE PROGRAMS, PROJECTS, AND ACTIVITIES.[1585]

(a) Subject to subsections (b), (c), and (d), new budget authority[1586] and unobligated balances for any programs, projects, or activities within major functional category 050 (other than a military personnel account[1587]) may be further reduced beyond the amount specified in an order issued by the President under section 254 for such fiscal year. To the extent such additional reductions are made and result in additional outlay[1588] reductions, the President may provide for lesser reductions in new budget authority and unobligated balances for other programs, projects, or activities within major functional category 050 for such fiscal year, but only to the extent that the resulting outlay increases do not exceed the additional outlay reductions, and no such program, project, or activity may be increased above the level actually made available by law in appropriation Acts (before taking sequestration[1589] into account). In making calculations under this subsection, the President shall use account outlay rates that are identical to those used in the report by the Director of OMB[1590] under section 254.

[1585] Section 13101(g) of the Budget Enforcement Act added section 258B. *See infra* p. 621. For legislative history of section 258B, see *infra* note 1603 (at the end of this section).

[1586] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1587] Section 250(c)(11) defines "account." *See supra* p. 377.

[1588] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1589] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

[1590] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

(b) No actions taken by the President under subsection (a) for a fiscal year may result in a domestic base closure or realignment that would otherwise be subject to section 2687 of title 10, United States Code.

(c) The President may not exercise the authority provided by this paragraph for a fiscal year unless --

(1) the President submits a single report to Congress specifying, for each account,[1591] the detailed changes proposed to be made for such fiscal year pursuant to this section;[1592]

[1591] Section 250(c)(11) defines "account." *See supra* p. 377.

[1592] On the evening of October 19, 1989, the President submitted to the Majority Leader of the Senate (before the Senate had recessed for the day) and to the Majority Leader of the House of Representatives (after the House had recessed for the day) what the President characterized as "an alternative sequester report" under the predecessor to this section. The "report," in full, was as follows:

> Alternative Sequester Report
> for the Department of Defense
> for Fiscal Year 1990
>
> To provide for flexibility among defense programs, projects, and activities, the amount of transfer authority available to the Secretary of Defense pursuant to Section 8014 of the Department of Defense Appropriations Act, 1989, as made available by the Joint Resolution making continuing appropriations for the fiscal year 1990, or any comparable provision subsequently enacted for fiscal year 1990, is proposed to be established at $6,000,000,000, effective upon enactment of a joint resolution approving this report.

On October 20, 1989, the Majority Leader introduced, by request, the joint resolution approving the "report" (S.J. Res. 219, 101st Cong., 1st Sess., 135 CONG. REC. S13,825 (1989)), reserving judgment as to whether the "report" complied with the requirements for that report set forth in section 252(c)(2). 135 CONG. REC. S13,825 (Oct. 20, 1989) (statement of Sen. Mitchell).

On October 27, 1989, the fifth calendar day after the date of introduction of the joint resolution, the Senate failed to discharge the Appropriations Committee of the joint resolution. Representatives of the Budget and Appropriations Committees had argued that, because it did not indicate what "programs, projects, and activities" were affected, the President's submission did not constitute a "report" within the meaning of the statute and was thus not entitled to the procedural protections afforded by this section, including discharge

(continued...)

(2) that report is submitted within 5 calendar days of the start of the next session of Congress; and

(3) a joint resolution affirming or modifying the changes proposed by the President pursuant to this paragraph becomes law.

(d) Within 5 calendar days of session after the President submits a report to Congress under subsection (c)(1) for a fiscal year, the majority leader of each House of Congress shall (by request) introduce a joint resolution which contains provisions affirming the changes proposed by the President pursuant to this paragraph.

(e)(1) The matter after the resolving clause in any joint resolution introduced pursuant to subsection (d) shall be as follows: "That the report of the President as submitted on [Insert Date] under section 258B is hereby approved.".

(2) The title of the joint resolution shall be "Joint resolution approving the report of the President submitted under section 258B of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(3) Such joint resolution shall not contain any preamble.

(f)(1) A joint resolution introduced in the Senate under subsection (d) shall be referred to the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with

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[1592] (...continued)
from the Appropriations Committee. The Senate's failure to discharge appears to reflect the Parliamentarian's belief that the report did not fulfill the statutory requirements.

this subsection. In the Senate, no amendment[1593] proposed[1594] in the Committee on Appropriations shall be in order other than an amendment (in the nature of a substitute) that is germane[1595] or relevant[1596] to the provisions of the joint resolu-

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[1593] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303(a)).

[1594] Section 8003(e) of the Omnibus Budget Reconciliation Act of 1987 substituted the word "proposed" here for the word "made" to reflect the fact that, in this context, committees merely propose amendments, while the Senate acts on them. Pub. L. No. 100-203, § 8003(e), 101 Stat. 1330, 1330-281 (Dec. 22, 1987).

[1595] For a discussion of germaneness, see *supra* note 329.

[1596] The test of relevance of amendments is broader than the germaneness test; it is a subject matter test, and amendments that deal with the subject matter of the bill are in order if they do not contain any significant matter not dealt with in the bill. 131 CONG. REC. S16,503 (1985); Senate Precedent PRL19851123-002 (Nov. 23, 1985). In the precedent of November 23, 1985, the Majority Leader (Senator Dole of Kansas) attempted to obtain a unanimous consent agreement on S. 1884, a bill to amend the Farm Credit Act of 1974, which proposed that amendments be germane. *Id.* The following colloquy took place:

> Mr. BAUCUS. -- I wonder if the majority leader would agree to change the consent agreement to allow the Senator from Montana to offer an amendment regardless of its germaneness.
>
> Mr. DOLE. Madam President, I ask unanimous consent that substitute amendments be in order and limited to 20 minutes provided they are relevant to the subject matter.
>
> Mr. BAUCUS. Reserving the right to object, Madam President, a parliamentary inquiry. I wonder what the difference between germaneness and relative to the subject matter would be. What is the difference between the two?
>
> The PRESIDING OFFICER (Mrs. Kassebaum of Kansas). Relevance is broader than germaneness, it is a subject matter test.
>
> Mr. BAUCUS. A further parliamentary inquiry. That means if the Senator from Montana has an amendment which has something to do with farm credit legislation, it would be in order under this agreement?
>
> The PRESIDING OFFICER. As long as it deals with the subject of the farm credit bill before us.

Id.

(continued...)

tion or to the order issued under section 254. For purposes of this paragraph, an amendment shall be considered to be relevant if it relates to function 050 (national defense).

(2) On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is placed on the Senate calendar, notwithstanding any rule or precedent of the Senate, including Rule XXII of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the Senate to move to proceed to the consideration of the joint resolution. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after such joint resolution is placed on the appropriate calendar. The motion is not debatable. The joint resolution is privileged in the Senate. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the Senate shall immediately proceed to consideration of the joint resolu-

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[1596](...continued)

Senator Harkin of Iowa then addressed additional questions to the Chair regarding the relevancy test:

> Mr. HARKIN. As I understand the modification just mentioned by the distinguished majority leader, we could offer amendments that dealt with the subject matter. My concern is that I may have an amendment which goes broader than just the Farm Credit System. It will deal with farm credit but it may go beyond the bill itself, which talks basically or only about the Farm Credit System itself.
>
> The PRESIDING OFFICER. It would not be relevant if it does contain any significant matter that is not dealt with in the farm credit legislation.
>
> Mr. HARKIN. So, Madam President, if I had an amendment that dealt with farm credit that applied both to the Farm Credit System and to, let us say, private lenders or private banks, would that be in order under the modification mentioned by the majority leader?
>
> The PRESIDING OFFICER. If private lenders and private banks are not dealt with in the original bill, it would not be in order.

Id.

tion without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the Senate until disposed of.

(g)(1) In the Senate, debate on a joint resolution introduced under subsection (d), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees).

(2) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order. In the Senate, a motion to recommit the joint resolution is not in order.

(h)(1) No amendment[1597] that is not germane[1598] or relevant[1599] to the provisions of the joint resolution or to the order issued under section 254 shall be in order in the Senate. For purposes of this paragraph, an amendment shall be considered to be relevant if it relates to function 050 (national defense). In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between, and controlled by, the mover and the majority leader (or their designees), except that in the event that the majority leader favors the amendment, motion, or appeal, the minority leader (or the minority leader's designee) shall control the time in opposition to the amendment, motion, or appeal.

[1597] An amendment is subject to points of order under the Congressional Budget Act even if the Senate has specified by unanimous consent that the amendment is one of the amendments in order and the yeas and nays have been ordered. *Cf. supra* note 275 (regarding section 303(a)).

[1598] For a discussion of germaneness, see *supra* note 329.

[1599] For a discussion of relevance, see *supra* note 1596.

(2) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended, so long as the amendment makes or maintains mathematical consistency. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

(3) It shall not be in order in the Senate to consider any amendment to any joint resolution introduced under subsection (d) or any conference report thereon if such amendment or conference report would have the effect of decreasing any specific budget outlay[1600] reductions below the level of such outlay reductions provided in such joint resolution unless such amendment or conference report makes a reduction in other specific budget outlays at least equivalent to any increase in outlays provided by such amendment or conference report.

(4) For purposes of the application of paragraph (3), the level of outlays[1601] and specific budget outlay reductions provided in an amendment shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.[1602]

(i) Immediately following the conclusion of the debate on a joint resolution introduced under subsection (d), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the Senate, and the disposition of any pending amendments under subsection (h), the vote on final passage of the joint resolution shall occur.

[1600] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1601] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1602] This subsection reflects the normal scorekeeping convention that Congress turns to its Budget Committees to assess the costs of legislation. *See also* section 201(g) of the Congressional Budget Act, *supra* p. 32; section 302(g) of the Congressional Budget Act, *supra* p. 82; section 310(d)(4) of the Congressional Budget Act, *supra* p. 142; section 311(c) of the Congressional Budget Act, *supra* p. 157; and section 313(e) of the Congressional Budget Act, *supra* p. 182.

(j) Appeals from the decisions of the Chair relating to the application of the rules of the Senate to the procedure relating to a joint resolution described in subsection (d) shall be decided without debate.

(k) In the Senate, points of order under titles III and IV of the Congressional Budget Act of 1974 (including points of order under sections 302(c), 303(a), 306, and 401(b)(1)) are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

(l) If, before the passage by the Senate of a joint resolution of the Senate introduced under subsection (d), the Senate receives from the House of Representatives a joint resolution introduced under subsection (d), then the following procedures shall apply:

(1) The joint resolution of the House of Representatives shall not be referred to a committee.

(2) With respect to a joint resolution introduced under subsection (d) in the Senate --

(A) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

(B)(i) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

(ii) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes the

Senate joint resolution, the Senate shall be considered to have passed the House joint resolution as amended by the text of the Senate joint resolution.

(3) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the joint resolution originated in the Senate.

(m) If the Senate receives from the House of Representatives a joint resolution introduced under subsection (d) after the Senate has disposed of a Senate originated joint resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.[1603]

[1603] Section 13101(g) of the Budget Enforcement Act added section 258B. *See infra* p. 621. The drafters of the Budget Enforcement Act based section 258B on the provisions of section 252(c) of Gramm-Rudman-Hollings as it existed before enactment of the Budget Enforcement Act. (Section 13101(a) of the Budget Enforcement Act repealed the old section 252(c). *See infra* p. 617.) Before enactment of the Budget Enforcement Act, section 252(c) of Gramm-Rudman-Hollings read as follows:

> (c) PROPOSAL OF ALTERNATIVES BY THE PRESIDENT. --
>
> (1) IN GENERAL. -- A message transmitted pursuant to subsection (a)(5) with respect to a fiscal year may be accompanied by a proposal setting forth in full detail alternative ways to reduce the deficit for such fiscal year in an amount not less than the deficit reduction required under section 251(a)(3) for such fiscal year.
>
> (2) FLEXIBILITY AMONG DEFENSE PROGRAMS, PROJECTS, AND ACTIVITIES. --
>
> (A) Subject to subparagraphs (B), (C), and (D), and subsection (d), new budget authority and unobligated balances for any programs, projects, or activities within major functional category 050 (other than a military personnel account) may be further reduced beyond the amount specified in an order issued by the President under subsection (b)(1) for such fiscal year. To the extent such additional reduc-

(continued...)

[1603](...continued)

tions are made and result in additional outlay reductions, the President may provide for lesser reductions in new budget authority and unobligated balances for other programs, projects, or activities within major functional category 050 for such fiscal year, but only to the extent that the resulting outlay increases do not exceed the additional outlay reductions, and no such program, project, or activity may be increased above the level actually made available by law in appropriation Acts (before taking sequestration into account). In making calculations under this subparagraph, the President shall use account outlay rates that are identical to those used in the report by the Director of OMB under section 251(c)(2).

(B) No actions taken by the President under subparagraph (A) for a fiscal year may result in a domestic base closure or realignment that would otherwise be subject to section 2687 of title 10, United States Code.

(C) The President may not exercise the authority provided by this paragraph for a fiscal year unless --

(i) the President submits a single report to Congress specifying changes proposed to be made for such fiscal year pursuant to this paragraph; and

(ii) a joint resolution affirming or modifying the changes proposed by the President pursuant to this paragraph becomes law.

(D) Within 5 calendar days of session after the President submits a report to Congress under subparagraph (C)(i) for a fiscal year, but before November 25, 1987, for fiscal year 1988 or, in the case of any subsequent fiscal year, before October 20 of such fiscal year, the majority leader of each House of Congress shall (by request) introduce a joint resolution which contains provisions affirming the changes proposed by the President pursuant to this paragraph.

(E)(i) The matter after the resolving clause in any joint resolution introduced pursuant to subparagraph (D) shall be as follows: "That the report of the President as submitted on [Insert Date] under section 252(c)(2)(C)(i) is hereby approved.".

(ii) The title of the joint resolution shall be "Joint resolution approving the report of the President submitted under section 252(c)(2)(C)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(continued...)

[1603](...continued)

(iii) Such joint resolution shall not contain any preamble.

(F)(i) A joint resolution introduced in the House of Representatives under subparagraph (D) shall be referred to the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection.

(ii) A joint resolution introduced in the Senate under subparagraph (D) shall be referred to the Committee on Appropriations, and if not reported within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of introduction shall be considered as having been discharged therefrom and shall be placed on the appropriate calendar pending disposition of such joint resolution in accordance with this subsection. In the Senate, no amendment proposed in the Committee on Appropriations shall be in order other than an amendment (in the nature of a substitute) that is germane or relevant to the provisions of the joint resolution or to the order issued under section 252(b)(1) insofar as they relate to major function 050 (national defense).

(iii) On or after the third calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after a joint resolution is placed on the appropriate calendar, notwithstanding any rule or precedent of the Senate, including Rule 22 of the Standing Rules of the Senate, it is in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the joint resolution, and all points of order against the joint resolution (and against consideration of the joint resolution) are waived, except for points of order under titles III and IV of the Congressional Budget Act of 1974. The motion is not in order after the eighth calendar day (excluding Saturdays, Sundays, and legal holidays) beginning after such joint resolution is placed on the appropriate calendar. The motion is highly privileged in the House of Representatives and is privileged in the Senate and is not debatable. The motion is not subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the joint resolution is agreed to, the respective House shall immediately proceed to consideration of the joint resolution

(continued...)

[1603](...continued)

without intervening motion, order, or other business, and the joint resolution shall remain the unfinished business of the respective House until disposed of.

(G)(i) In the Senate, debate on a joint resolution introduced under subparagraph (D), amendments thereto, and all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours, which shall be divided equally between the majority leader and the minority leader (or their designees). In the House, general debate on a joint resolution introduced under subparagraph (D) shall be limited to not more than 4 hours which shall be equally divided between the chairman of the Committee on Appropriations and the ranking minority member of such committee.

(ii) A motion to postpone, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the joint resolution is agreed to or disagreed to is not in order. In the Senate, a motion to recommit the joint resolution is not in order. In the House, a motion further to limit debate is in order and not debatable. In the House, a motion to recommit, with or without instructions, is in order.

(H)(i) In the House of Representatives, an amendment and any amendment to an amendment is debatable for not to exceed 30 minutes to be equally divided between the proponent of the amendment and a Member opposed thereto.

(ii) No amendment that is not germane or relevant to the provisions of the joint resolution or to the order issued under section 252(b)(1) insofar as they relate to major function 050 (national defense) shall be in order in the Senate. In the Senate, an amendment, any amendment to an amendment, or any debatable motion or appeal is debatable for not to exceed 30 minutes to be equally divided between the majority leader and the minority leader (or their designees).

(iii) In the Senate, an amendment that is otherwise in order shall be in order notwithstanding the fact that it amends the joint resolution in more than one place or amends language previously amended. It shall not be in order in the Senate to vote on the question of agreeing to such a joint resolution or any amendment thereto unless the figures then contained in such joint resolution or amendment are mathematically consistent.

(iv) It shall not be in order in the Senate to con-

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[1603](...continued)

sider any amendment to any joint resolution introduced under subparagraph (D) or any conference report thereon if such amendment or conference report would have the effect of decreasing any specific budget outlay reductions below the level of such outlay reductions provided in such joint resolution unless such amendment or conference report makes a reduction in other specific budget outlays at least equivalent to any increase in outlays provided by such amendment or conference report.

(v) For purposes of the application of clause (iv), the level of outlays and specific budget outlay reductions provided in an amendment shall be determined on the basis of estimates made by the Committee on the Budget of the Senate.

(I) Immediately following the conclusion of the debate on a joint resolution introduced under subparagraph (D), a single quorum call at the conclusion of the debate if requested in accordance with the rules of the appropriate House, and the disposition of any amendments under subparagraph (H) (except in the House of Representatives for the motion to recommit and the disposition of any amendment proposed in a motion to recommit which has been adopted), the vote on final passage of the joint resolution shall occur.

(J) Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to a joint resolution described in subparagraph (D) shall be decided without debate.

(K) In the Senate, points of order under titles III and IV of the Congressional Budget Act of 1974 (including points of order under sections 302(c), 303(a), 306, and 401(b)(1)) are applicable to a conference report on the joint resolution or any amendments in disagreement thereto.

(L) If, before the passage by the Senate of a joint resolution of the Senate introduced under subparagraph (D), the Senate receives from the House of Representatives a joint resolution introduced under subparagraph (D), then the following procedures shall apply:

(i) The joint resolution of the House of Representatives shall not be referred to a committee.

(ii) With respect to a joint resolution introduced under subparagraph (D) in the Senate--

(continued...)

[1603](...continued)

(I) the procedure in the Senate shall be the same as if no joint resolution had been received from the House; but

(II)(aa) the vote on final passage shall be on the joint resolution of the House if it is identical to the joint resolution then pending for passage in the Senate; or

(bb) if the joint resolution from the House is not identical to the joint resolution then pending for passage in the Senate and the Senate then passes it, the Senate shall be considered to have passed the joint resolution as amended by the text of the Senate joint resolution.

(iii) Upon disposition of the joint resolution received from the House, it shall no longer be in order to consider the joint resolution originated in the Senate.

(M) If the Senate receives from the House of Representatives a joint resolution introduced under subparagraph (D) after the Senate has disposed of a Senate originated joint resolution which is identical to the House passed joint resolution, the action of the Senate with regard to the disposition of the Senate originated joint resolution shall be deemed to be the action of the Senate with regard to the House originated joint resolution. If it is not identical to the House passed joint resolution, then the Senate shall be considered to have passed the joint resolution of the House as amended by the text of the Senate joint resolution.

SEC. 258C. SPECIAL RECONCILIATION PROCESS.[1604]

(a) REPORTING OF RESOLUTIONS AND RECONCILIATION BILLS AND RESOLUTIONS, IN THE SENATE. --

(1) COMMITTEE ALTERNATIVES TO PRESIDENTIAL ORDER.-- After the submission of an OMB[1605] sequestration[1606] update report under section 254 that envisions a sequestration under section 252 or 253, each standing committee of the Senate may, not later than October 10, submit to the Committee on the Budget of the Senate information of the type described in section 301(d) of the Congressional Budget Act of 1974 with respect to alternatives to the order envisioned by such report insofar as such order affects laws within the jurisdiction of the committee.

(2) INITIAL BUDGET COMMITTEE ACTION. -- After the submission of such a report, the Committee on the Budget of the Senate may, not later than October 15, report to the Senate a resolution. The resolution may affirm the impact of the order envisioned by such report, in whole or in part. To the extent that any part is not affirmed, the resolution shall state which parts are not affirmed and shall contain instructions to committees of the Senate of the type referred to in section 310(a) of the Congressional Budget Act of 1974, sufficient to achieve at least the total level of

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[1604] Section 13101(g) of the Budget Enforcement Act added section 258C. *See infra* p. 621. For legislative history on section 258C, see *infra* note 1613 (at the end of this section).

[1605] Section 250(c)(15) defines "OMB" to mean "the Director of the Office of Management and Budget." *See supra* p. 377.

[1606] Section 250(c)(2) defines "sequestration." *See supra* p. 372.

deficit[1607] reduction contained in those sections which are not affirmed.

(3) Response of committees. -- Committees instructed pursuant to paragraph (2), or affected thereby, shall submit their responses to the Budget Committee no later than 10 days after the resolution referred to in paragraph (2) is agreed to, except that if only one such Committee is so instructed such Committee shall, by the same date, report to the Senate a reconciliation bill or reconciliation resolution containing its recommendations in response to such instructions. A committee shall be considered to have complied with all instructions to it pursuant to a resolution adopted under paragraph (2) if it has made recommendations with respect to matters within its jurisdiction which would result in a reduction in the deficit[1608] at least equal to the total reduction directed by such instructions.

(4) Budget committee action. -- Upon receipt of the recommendations received in response to a resolution referred to in paragraph (2), the Budget Committee shall report to the Senate a reconciliation bill or reconciliation resolution, or both, carrying out all such recommendations without any substantive revisions. In the event that a committee instructed in a resolution referred to in paragraph (2) fails to submit any recommendation (or, when only one committee is instructed, fails to report a reconciliation bill or resolution) in response to such instructions, the Budget Committee shall include in the reconciliation bill or reconciliation resolution reported pursuant to this subparagraph legislative language within the jurisdiction of the noncomplying committee to achieve the amount of

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[1607] Section 250(c)(1) (*see supra* p. 372) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1608] Section 250(c)(1) (*see supra* p. 372) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

deficit[1609] reduction directed in such instructions.

(5) Point of order. -- It shall not be in order in the Senate to consider any reconciliation bill or reconciliation resolution reported under paragraph (4) with respect to a fiscal year, any amendment thereto, or any conference report thereon if --

(A) the enactment of such bill or resolution as reported;

(B) the adoption and enactment of such amendment; or

(C) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the amount of the deficit[1610] for such fiscal year to exceed the maximum deficit amount[1611] for such fiscal year, unless the low-growth report submitted under section 254 projects negative real economic growth[1612] for such fiscal year, or for each of any two consecutive quarters during such fiscal year.

(6) Treatment of certain amendments. -- In the Senate, an amendment which adds to a resolution reported under paragraph (2) an instruction of the type referred to in such paragraph shall be in order during the consideration of such resolution if such amendment would be in

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[1609] Section 250(c)(1) (*see supra* p. 372) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1610] Section 250(c)(1) (*see supra* p. 372) defines "deficit" by adopting the definition of section 3(6) of the Congressional Budget Act. *See supra* p. 16.

[1611] Section 250(c)(1) of Gramm-Rudman-Hollings (*see supra* p. 372) defines "maximum deficit amount" by adopting the definition of section 601(a)(1) of the Congressional Budget Act (*see supra* p. 252) as adjusted under sections 251 and 253 of Gramm-Rudman-Hollings. *See supra* pp. 403-429, 457-473.

[1612] Section 250(c)(10) defines "real economic growth." *See supra* p. 377.

order but for the fact that it would be held to be nongermane on the basis that the instruction constitutes new matter.

(7) DEFINITION. -- For purposes of paragraphs (1), (2), and (3), the term day shall mean any calendar day on which the Senate is in session.

(b) PROCEDURES. --

(1) IN GENERAL. -- Except as provided in paragraph (2), in the Senate the provisions of sections 305 and 310 of the Congressional Budget Act of 1974 for the consideration of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration of resolutions, and reconciliation bills and reconciliation resolutions reported under this paragraph and conference reports thereon.

(2) LIMIT ON DEBATE. -- Debate in the Senate on any resolution reported pursuant to subsection (a)(2), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to 10 hours.

(3) LIMITATION ON AMENDMENTS. -- Section 310(d)(2) of the Congressional Budget Act shall apply to reconciliation bills and reconciliation resolutions reported under this subsection.

(4) BILLS AND RESOLUTIONS RECEIVED FROM THE HOUSE. -- Any bill or resolution received in the Senate from the House, which is a companion to a reconciliation bill or reconciliation resolution of the Senate for the purposes of this subsection, shall be considered in the Senate pursuant to the provisions of this subsection.

(5) DEFINITION. -- For purposes of this subsection, the term "resolution" means a simple, joint, or concurrent

resolution.[1613]

[1613] Section 13101(g) of the Budget Enforcement Act added section 258C. *See infra* p. 621. The drafters of the Budget Enforcement Act based section 258C on the provisions of section 254(b) of Gramm-Rudman-Hollings as it existed before enactment of the Budget Enforcement Act. (Section 13101(a) of the Budget Enforcement Act repealed the old section 254(b). *See infra* p. 617.) Before enactment of the Budget Enforcement Act, section 254(b) of Gramm-Rudman-Hollings read as follows:

> (b) CONGRESSIONAL RESPONSE TO PRESIDENTIAL ORDER. --
>
> (1) REPORTING OF RESOLUTIONS, AND RECONCILIATION BILLS AND RESOLUTIONS, IN THE SENATE. --
>
> (A) COMMITTEE ALTERNATIVES TO PRESIDENTIAL ORDER. -- Within two days after the submission of a report by the Director of OMB under section 251(c)(2), each standing committee of the Senate may submit to the Committee on the Budget of the Senate information of the type described in section 301(d) of the Congressional Budget Act of 1974 with respect to alternatives to the order envisioned by such report insofar as such order affects laws within the jurisdiction of the committee.
>
> (B) INITIAL BUDGET COMMITTEE ACTION. -- Not later than two days after issuance of a final order by the President under section 252(b) with respect to a fiscal year, the Committee on the Budget of the Senate may report to the Senate a resolution. The resolution may affirm the impact of the order issued under such section, in whole or in part. To the extent that any part of the order is not affirmed, the resolution shall state which parts are not affirmed and shall contain instructions to committees of the Senate of the type referred to in section 310(a) of the Congressional Budget Act of 1974, sufficient to achieve at least the total level of deficit reduction contained in those sections which are not affirmed.
>
> (C) RESPONSE OF COMMITTEES. -- Committees instructed pursuant to subparagraph (B), or affected thereby, shall submit their responses to the Budget Committee no later than 10 days after the resolution referred to in subparagraph (B) is agreed to, except that if only one such Committee is so instructed such Committee shall, by the same date, report to the Senate a reconciliation bill or reconciliation resolution containing its recommendations in response to such instructions. A committee shall be considered to have complied with all instructions to it pursuant to a resolution adopted under subparagraph (B) if it has made recommendations with respect to matters within its jurisdiction which would result in a reduction in the deficit at least equal to the total reduction directed by such instructions.

(continued...)

[1613](...continued)

(D) BUDGET COMMITTEE ACTION. -- Upon receipt of the recommendations received in response to a resolution referred to in subparagraph (B), the Budget Committee shall report to the Senate a reconciliation bill or reconciliation resolution, or both, carrying out all such recommendations without any substantive revisions. In the event that a committee instructed in a resolution referred to in subparagraph (B) fails to submit any recommendation (or, when only one committee is instructed, fails to report a reconciliation bill or resolution) in response to such instructions, the Budget Committee shall include in the reconciliation bill or reconciliation resolution reported pursuant to this subparagraph legislative language within the jurisdiction of the noncomplying committee to achieve the amount of deficit reduction directed in such instructions.

(E) POINT OF ORDER. -- It shall not be in order in the Senate to consider any reconciliation bill or reconciliation resolution reported under subparagraph (D) with respect to a fiscal year, any amendment thereto, or any conference report thereon if --

(i) the enactment of such bill or resolution as reported;

(ii) the adoption and enactment of such amendment; or

(iii) the enactment of such bill or resolution in the form recommended in such conference report,

would cause the amount of the deficit for such fiscal year to exceed the maximum deficit amount for such fiscal year, and for fiscal year 1988 or 1989, exceed the amount of the estimated deficit for such fiscal year based on laws and regulations in effect on January 1 of the calendar year in which such fiscal year begins as measured using the budget baseline specified in section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 minus $23,000,000,000 for fiscal year 1988 or $36,000,000,000 for fiscal year 1989; unless the report submitted under section 251(c)(1) projects negative real economic growth for such fiscal year, or for each of any two consecutive quarters during such fiscal year.

(F) TREATMENT OF CERTAIN AMENDMENTS. -- In the Senate, an amendment which adds to a resolution reported under subparagraph (B) an instruction of the type referred to in such subparagraph shall be in order during the consideration of such resolution if such amendment would be in

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[1613](...continued)

order but for the fact that it would be held to be nongermane on the basis that the instruction constitutes new matter.

(G) DEFINITION. -- For purposes of subparagraphs (A), (B), and (C), the term "day" shall mean any calendar day on which the Senate is in session.

(2) PROCEDURES. --

(A) IN GENERAL. -- Except as provided in subparagraph (B), in the Senate the provisions of sections 305 and 310 of the Congressional Budget Act of 1974 for the consideration of concurrent resolutions on the budget and conference reports thereon shall also apply to the consideration of resolutions, and reconciliation bills and reconciliation resolutions reported under this paragraph and conference reports thereon.

(B) LIMIT ON DEBATE. -- Debate in the Senate on any resolution reported pursuant to paragraph (1)(B), and all amendments thereto and debatable motions and appeals in connection therewith, shall be limited to 10 hours.

(C) LIMITATION ON AMENDMENTS. -- Section 310(d)(2) of the Congressional Budget Act shall apply to reconciliation bills and reconciliation resolutions reported under this subsection.

(D) BILLS AND RESOLUTIONS RECEIVED FROM THE HOUSE. -- Any bill or resolution received in the Senate from the House, which is a companion to a reconciliation bill or reconciliation resolution of the Senate for the purposes of this subsection, shall be considered in the Senate pursuant to the provisions of this subsection.

(E) DEFINITION. -- For purposes of this subsection, the term "resolution" means a simple, joint, or concurrent resolution.

PART D
BUDGETARY TREATMENT OF SOCIAL SECURITY TRUST FUNDS

SEC. 261. TREATMENT OF TRUST FUNDS.

(a) FISCAL YEARS 1986 THROUGH 1992. --

(1) IN GENERAL. -- Section 710 of the Social Security Act (as added by paragraph (1) of subsection (a) of section 346 of the Social Security Amendments of 1983) is amended --

(A) by striking out all beginning with "the" the first place it appears down through "Disability Insurance Trust Fund, the" and inserting in lieu thereof "the";

(B) by striking out the comma after "Hospital Insurance Trust Fund";

(C) by striking out "sections 1401, 3101, and 3111" and inserting in lieu thereof "sections 1401(b), 3101(b), and 3111(b)";

(D) by redesignating all after the section designation as subsection (b);

(E) by inserting immediately after the section designation the following:

> "(a) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, and the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954, shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays[1614]) of the United States Government."; and

(F) by adding at the end thereof the following new subsection:

> "(c) No provision of law enacted after the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (other than a provision of an appropriation Act[1615] that appropriates funds authorized under the Social Security Act as in effect on the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985) may provide for payments from the general fund of the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, or for

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[1614] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

[1615] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

> payments from either such Trust Fund to the general fund of the Treasury.".

(2) APPLICATION. -- The amendments made by paragraph (1) shall apply with respect to fiscal years beginning after September 30, 1985, and ending before October 1, 1992.

(b) FISCAL YEAR 1993 AND THEREAFTER. -- Section 710(a) of the Social Security Act (42 U.S.C. 911 note), as amended by section 346(b) of the Social Security Amendments of 1983 (to be effective with respect to fiscal years beginning after September 30, 1992) is amended --

(1) by inserting "(1)" after the subsection designation; and

(2) by adding at the end thereof the following new paragraph:

> "(2) No provision of law enacted after the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985 (other than a provision of an appropriation Act[1616] that appropriates funds authorized under the Social Security Act as in effect on the date of the enactment of the Balanced Budget and Emergency Deficit Control Act of 1985) may provide for payments from the general fund of the Treasury to any Trust Fund specified in paragraph (1) or for payments from any such Trust Fund to the general fund of the Treasury.".

[1616] Section 3(5) of the Congressional Budget Act defines "appropriation Act" by reference to 1 U.S.C. § 105. *See supra* p. 16. For the text of 1 U.S.C. § 105 (1988), see *supra* note 30.

PART E
MISCELLANEOUS AND RELATED PROVISIONS

SEC. 271. WAIVERS AND SUSPENSIONS; RULEMAKING POWERS.

(a) Budget Act Waivers in the Senate. -- Section 904 of the Congressional Budget Act of 1974 is amended by redesignating subsection (c) as subsection (d), and by inserting after subsection (b) the following new subsection:

> **"(c) Sections 305(b)(2) and 306 of this Act may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.".**

(b) Other Waivers and Suspensions in the Senate. -- Sections 301(i), 302(c), 302(f), 304(b), 310(d), 310(g), and 311(a) of the Congressional Budget Act of 1974 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. This subsection shall not apply to any joint resolution reported or discharged pursuant to section 254(a) of this joint resolution.[1617]

[1617] Section 13208(a)(1) of the Budget Enforcement Act (*see infra* p. 643) amended section 904(c) of the Congressional Budget Act (*see supra* p. 298) to address many of the matters addressed by this subsection. Congress meant for section 904(c) of the Congressional Budget Act to supersede this subsection, although when section 13208 of the Budget Enforcement Act (*see infra* pp. 643-644) added the material to section 904(c), it mistakenly did not repeal this subsection. To the extent that direct conflicts exist, however, the later-enacted language of section 904(c) of the Congressional Budget Act takes precedence over that of this subsection. Section 904(c) of the Congressional Budget Act provides:

> (c) Waiver. -- Sections 305(b)(2), 305(c)(4), 306, 904(c), and 904(d) may be waived or suspended in the Senate only by the affirmative vote of

(continued...)

(c) APPEALS OF RULINGS. -- An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under section 301(i), 302(c), 302(f), 304(b), 306, 310(d), 310(g), or 311(a) of the Congressional Budget Act of 1974.[1618]

[1617](...continued)
three-fifths of the Members, duly chosen and sworn. Sections 301(i), 302(c), 302(f), 310(d)(2), 310(f), 311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

See supra p. 298

[1618] Section 210 of the Balanced Budget and Emergency Deficit Reduction Reaffirmation Act of 1987 added this subsection.

Section 13208(a)(1) of the Budget Enforcement Act (*see infra* p. 643) amended section 904(d) of the Congressional Budget Act (*see supra* p. 302) to address many of the matters addressed by this subsection. Congress meant for section 904(d) of the Congressional Budget Act to supersede this subsection, although when section 13208 of the Budget Enforcement Act (*see infra* pp. 643-644) added the material to section 904(d), it mistakenly did not repeal this subsection. To the extent that direct conflicts exist, however, the later-enacted language of section 904(d) of the Congressional Budget Act takes precedence over that of this subsection. Section 904(d) of the Congressional Budget Act provides:

> (d) Appeals in the Senate from the decisions of the Chair relating to any provision of title III or IV or section 1017 shall, except as otherwise provided therein, be limited to 1 hour, to be equally divided between, and controlled by, the mover and the manager of the resolution, concurrent resolution, reconciliation bill, or rescission bill, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 305(b)(2), 305(c)(4), 306, 904(c), and 904(d). An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 301(i), 302(c), 302(f), 310(d)(2), 310(f), 311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985

See supra p. 302.

(d)[1619] RULEMAKING POWERS. -- The provisions of this title, other than those relating to the activities of the executive and judicial branches of the Government, are enacted by the Congress --

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner and to the same extent as in the case of any other rule of such House.

[1619] This was originally subsection (c). Section 210 of the Balanced Budget and Emergency Deficit Reduction Reaffirmation Act of 1987 redesignated this subsection as subsection (d).

SEC. 272. RESTORATION OF TRUST FUND INVESTMENTS.

(a) RESTORATION OF SOCIAL SECURITY TRUST FUNDS AND CERTAIN OTHER FUNDS. --

(1) REISSUANCE OF OBLIGATIONS. -- The Secretary of the Treasury shall immediately reissue to each fund listed in paragraph (3) obligations under chapter 31 of title 31, United States Code, which are identical, with respect to interest rate and maturity, to public debt obligations held by such fund which --

(A) were redeemed during the period beginning with September 1, 1985, and ending with September 29, 1985, and

(B) as determined by such Secretary on the basis of standard investment procedures for such fund in effect on September 1, 1985, would not have been redeemed if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985.

Such obligations shall be substituted for obligations which are held by such fund on the date of the enactment of this joint resolution in a manner which will ensure that, after such substitution, the holdings of such fund will replicate to the maximum extent practicable the holdings which would have been held by such fund on such date if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985.

(2) APPROPRIATION TO FUNDS OF INTEREST LOST ON OR AFTER SEPTEMBER 1, 1985. -- The Secretary of the Treasury shall pay on the normal interest payment date to each fund listed in paragraph (3), from amounts in the general fund of the Treasury not otherwise appropriated, an amount determined by such Secretary to be equal to the excess of --

(A) the net amount of interest which would have been earned by such fund, during the period beginning with September 1, 1985, and ending with the date of the enactment of this joint resolution, if all noninvestments, redemptions, and disinvestments with respect to such fund which --

(i) occurred during such period, and

(ii) would not have occurred if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985, had not occurred, over

(B) the net amount of interest actually earned by such fund during such period.

(3) FUNDS AFFECTED. -- The funds referred to in paragraphs (1) and (2) are the following:

(A) the Federal Old-Age and Survivors Insurance Trust Fund,

(B) the Federal Disability Insurance Trust Fund,

(C) the Federal Hospital Insurance Trust Fund,

(D) the Federal Supplementary Medical Insurance Trust Fund,

(E) the Railroad Retirement Account,

(F) the Civil Service Retirement and Disability Fund, and

(G) all other funds (other than the funds referred to in subsection (b) or (c)) listed in Table III of the Monthly Statement of the Public Debt issued by the Department of the Treasury for November 30, 1985.

(b) RESTORATION OF DEPARTMENT OF DEFENSE MILITARY RETIREMENT FUND. --

(1) ISSUANCE OF OBLIGATIONS. -- The Secretary of the Treasury shall immediately issue to the Department of Defense Military Retirement Fund obligations under chapter 31 of title 31, United States Code, which such Secretary, in consultation with the Secretary of Defense, determines would have been issued to such fund on October 1, 1985, if H.J. Res. 372 (99th Congress, 1st Session), as deemed passed by the House of Representatives on August 1, 1985, had been enacted into law on August 1, 1985. Such obligations shall be market-based special obligations issued at prices, including accrued interest, prevailing for such obligations on October 1, 1985. Such obligations shall be substituted for all obligations which were purchased by such fund during the period beginning with October 1, 1985, and ending with November 14, 1985, with amounts which were transferred to such fund on October 1, 1985.

(2) APPROPRIATION TO FUND OF INTEREST LOST ON OR AFTER OCTOBER 1, 1985. --

(A) IN GENERAL. -- The Secretary of the Treasury

shall immediately pay to the Department of Defense Military Retirement Fund, from amounts in the general fund of the Treasury not otherwise appropriated, an amount determined by such Secretary, in consultation with the Secretary of Defense, to be equal to the excess of --

(i) the interest which would have been earned by such fund during the period beginning with October 1, 1985, and ending with November 14, 1985, if the obligations issued pursuant to paragraph (1) had been issued on October 1, 1985, over

(ii) the amount of interest actually collected by such fund during such period on obligations purchased by such fund with amounts which were transferred to such fund on October 1, 1985.

(B) INVESTMENT OF INTEREST RECEIPTS. -- The Secretary of the Treasury shall immediately invest the amount paid to the Department of Defense Military Retirement Fund pursuant to subparagraph (A) in obligations designated by the Secretary of Defense. Such obligations shall be market-based special obligations issued with an issue date of November 15, 1985, and at prices, including accrued interest, prevailing for such obligations on November 15, 1985.

(c) APPROPRIATION TO CERTAIN FUNDS WITH RESPECT TO UNINVESTED BALANCES AFTER DECEMBER 6, 1985. --

(1) IN GENERAL. -- The Secretary of the Treasury shall immediately pay, from amounts in the general fund not otherwise appropriated, to each fund which is listed in Table III of the Monthly Statement of the Public Debt issued by the Department of the Treasury for November

30, 1985, and which invests in market-based special obligations under chapter 31 of title 31, United States Code, an amount equal to the interest which would have been earned by such fund during the period beginning with December 7, 1985, and ending with the date of the enactment of this joint resolution, if the daily balance in such fund which the Secretary of the Treasury was requested to invest during such period but was unable to invest, because of the expiration of the temporary debt limit, had been invested each day during such period, overnight, in obligations under such chapter 31 earning interest at a rate determined by the Secretary of the Treasury in accordance with the standard practice of the Department of the Treasury.

(2) EXPIRATION OF TEMPORARY DEBT LIMIT DEFINED. -- For purposes of paragraph (1), the term "expiration of the temporary debt limit" means the expiration of the period described in section 1 of the Act entitled "An Act to temporarily increase the limit on the public debt and to restore the investments of the Social Security Trust Funds and other trust funds", approved November 14, 1985 (Public Law 99-155).

(d) ADDITIONAL APPROPRIATION TO OASDI TRUST FUNDS OF INTEREST LOST FROM ACTIONS TAKEN IN SEPTEMBER AND OCTOBER 1984. --

(1) IN GENERAL. -- On December 31, 1985, the Secretary of the Treasury shall pay to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, amounts determined under this subsection.

(2) AMOUNT PAID TO EACH TRUST FUND. -- The amount paid to each such Trust Fund pursuant to paragraph (1) shall be an amount determined jointly by the Secretary of the Treasury and the Secretary of Health and Human

Services to be sufficient to fully compensate such Trust Fund for interest losses arising from the premature redemption, during the period beginning with September 1, 1984, and ending with October 31, 1984, of securities maturing during the period beginning with calendar year 1987 and ending with calendar year 1991.

(3) LIMITATION. -- The total amount paid from the general fund of the Treasury pursuant to paragraph (1) shall not exceed $550,000,000.

(4) ADJUSTMENTS. --

(A) DETERMINATION OF SHORTFALLS AND EXCESSES IN PAYMENTS TO TRUST FUNDS. -- As soon as practicable after May 31, 1986, the Secretary of the Treasury and the Secretary of Health and Human Services shall jointly determine any shortfall or excess in the amount paid to each Trust Fund pursuant to paragraph (1) caused by --

(i) the difference between actual interest rates and interest rates assumed for purposes of paragraph (1), and

(ii) the difference between the actual amount of securities redeemed in January 1986 for purposes of compliance with section 201(l)(3)(B) of the Social Security Act and the amount of securities assumed for purposes of paragraph (1) to be redeemed in such month for purposes of compliance with such section.

(B) PAYMENT OF SHORTFALLS AND EXCESSES. -- On June 30, 1986, the Secretary of the Treasury shall --

(i) in the case of a shortfall in the amount paid to either Trust Fund determined pursuant to subparagraph (A), pay to such

Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, the amount of such shortfall, or

(ii) in the case of an excess in the amount paid to either Trust Fund determined pursuant to subparagraph (A), pay to the general fund of the Treasury, from such Trust Fund, the amount of such excess (but not to exceed the amount paid to such Trust Fund pursuant to paragraph (1)).

SEC. 273. REVENUE ESTIMATES[1620]

[1620] Section 13202(b) of the Budget Enforcement Act (*see infra* p. 632) transferred the text of what used to be section 273 of Gramm-Rudman-Hollings to section 201 of the Congressional Budget Act. *See supra* p. 32. Before enactment of the Budget Enforcement Act, the text of section 273 read as follows:

> For the purposes of revenue legislation which is income, estate and gift, excise, and payroll taxes (i.e., Social Security), considered or enacted in any session of Congress, the Congressional Budget Office shall use exclusively during that session of Congress revenue estimates provided to it by the Joint Committee on Taxation. During that session of Congress such revenue estimates shall be transmitted by the Congressional Budget Office to any committee of the House of Representatives or the Senate requesting such estimates, and shall be used by such Committees in determining such estimates. The Budget Committees of the Senate and House shall determine all estimates with respect to scoring points of order and with respect to the execution of the purposes of this Act.

SEC. 274. JUDICIAL REVIEW.

(a) Expedited Review. --

(1) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief on the ground that any order that might be issued pursuant to section 252 violates the Constitution.

(2) Any Member of Congress, or any other person adversely affected by any action taken under this title, may bring an action, in the United States District Court for the District of Columbia, for declaratory judgment and injunctive relief concerning the constitutionality of this title.

(3) Any Member of Congress may bring an action, in the United States District Court for the District of Columbia, for declaratory and injunctive relief on the ground that the terms of an order issued under section 252 do not comply with the requirements of this title.

(4) A copy of any complaint in an action brought under paragraph (1), (2), or (3) shall be promptly delivered to the Secretary of the Senate and the Clerk of the House of Representatives, and each House of Congress shall have the right to intervene in such action.

(5) Any action brought under paragraph (1), (2), or (3) shall be heard and determined by a three-judge court in accordance with section 2284 of title 28, United States Code.

Nothing in this section or in any other law shall infringe upon the right of the House of Representatives to intervene in an action brought under paragraph (1), (2), or (3) without the necessity of adopting a resolution to authorize such intervention.

(b) APPEAL TO SUPREME COURT. -- Notwithstanding any other provision of law,any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under paragraph (1), (2), or(3) of subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under paragraph (1), (2), or (3) of subsection (a) shall be issued by a single Justice of the Supreme Court.

(c) EXPEDITED CONSIDERATION. -- It shall be the duty of the District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any matter brought under subsection (a).

(d) NONCOMPLIANCE WITH SEQUESTRATION PROCEDURES. --

(1) If it is finally determined by a court of competent jurisdiction that an order issued by the President under section 252(b) for any fiscal year --

(A) does not reduce automatic spending increases under any program specified in section 257(l) to the extent that such increases are required to be reduced by part C of this title (or reduces such increases by a greater extent than is so required),

(B) does not sequester the amount of new budget authority,[1621] new loan guarantee commitments, new direct loan obligations, or spending authority[1622] which is required to be sequestered by such part (or sequesters more than that amount) with respect to any program, project, activity, or account, or

(C) does not reduce obligation limitations by the amount by which such limitations are required to be reduced under such part (or reduces such limitations by more than that amount) with respect to any program, project, activity, or account, the President shall, within 20 days after such determination is made, revise the order in accordance with such determination.

(2) If the order issued by the President under section 252(b) for any fiscal year --

(A) does not reduce any automatic spending increase to the extent that such increase is required to be reduced by part C of this title,

(B) does not sequester any amount of new budget authority,[1623] new loan guarantee commitments, new direct loan obligations, or spending authority[1624] which is required to be sequestered by such part, or

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[1621] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1622] Section 401(c)(2) of the Congressional Budget Act defines "spending authority." *See supra* pp. 203-206.

[1623] Section 250(c)(1) (*see supra* p. 372) defines "budget authority" and "new budget authority" at least in part by reference to the definitions of section 3(2) of the Congressional Budget Act. *See supra* pp. 11-13.

[1624] Section 401(c)(2) of the Congressional Budget Act defines "spending authority." *See supra* pp. 203-206.

(C) does not reduce any obligation limitation by the amount by which such limitation is required to be reduced under such part, on the claim or defense that the constitutional powers of the President prevent such sequestration or reduction or permit the avoidance of such sequestration or reduction, and such claim or defense is finally determined by the Supreme Court of the United States to be valid, then the entire order issued pursuant to section 252(b) for such fiscal year shall be null and void.

(e) TIMING OF RELIEF. -- No order of any court granting declaratory or injunctive relief from the order of the President issued under section 252, including but not limited to relief permitting or requiring the expenditure of funds sequestered by such order, shall take effect during the pendency of the action before such court, during the time appeal may be taken, or, if appeal is taken, during the period before the court to which such appeal is taken has entered its final order disposing of such action.

(f) ALTERNATIVE PROCEDURES FOR THE JOINT REPORTS OF THE DIRECTORS. --

(1) In the event that any of the reporting procedures described in section 251 are invalidated, then any report of the Directors referred to in section 251(a) or (c)(1) shall be transmitted to the joint committee established under this subsection.

(2) Upon the invalidation of any such procedure there is established a Temporary Joint Committee on Deficit Reduction, composed of the entire membership of the Budget Committees of the House of Representatives and the Senate. The Chairman of these two committees shall act as Co-Chairmen of the Joint Committee. Actions taken by the Joint Committee shall be determined by the

majority vote of the members representing each House. The purposes of the Joint Committee are to receive the reports of the Directors as described in paragraph (1), and to report (with respect to each such report of the Directors) a joint resolution as described in paragraph (3).

(3) No later than 5 days after the receipt of a report of the Directors in accordance with paragraph (1), the Joint Committee shall report to the House of Representatives and the Senate a joint resolution setting forth the contents of the report of the Directors.

(4) The provisions relating to the consideration of a joint resolution under section 254(a)(4) shall apply to the consideration of a joint resolution reported pursuant to this subsection in the House of Representatives and the Senate, except that debate in each House shall be limited to two hours.

(5) Upon its enactment, the joint resolution shall be deemed to be the report received by the President under section 251(b) or (c)(2) (whichever is applicable).

(g) PRESERVATION OF OTHER RIGHTS. -- The rights created by this section are in addition to the rights of any person under law, subject to subsection (e).

(h) ECONOMIC DATA, ASSUMPTIONS, AND METHODOLOGIES. -- The economic data, assumptions, and methodologies used by the Comptroller General in computing the base levels of total revenues and total budget outlays,[1625] as specified in any report issued by the Comptroller General under section 251(b) or (c)(2), shall not be subject to review in any judicial or administrative proceeding.

[1625] Section 250(c)(1) (*see supra* p. 372) defines "outlays" at least in part by reference to the definition of section 3(1) of the Congressional Budget Act. *See supra* p. 11.

SEC. 275. EFFECTIVE DATES.

(a) IN GENERAL. --

(1) Except as provided in paragraph (2) and in subsections (b) and (c), this title and the amendments made by this title shall become effective on the date of the enactment of this title and shall apply with respect to fiscal years beginning after September 30, 1985.

(2)(A) The amendment made by section 201(a)(2), and the amendment made by section 201(b) insofar as it relates to subsections (c), (f), and (g) of section 302 of the Congressional Budget Act of 1974 and to subsections (c), (d), and (g) of section 310 of that Act), shall become effective April 15, 1986.

(B) The amendment made by section 212 shall become effective February 1, 1986.

(b) Expiration.[1626] -- Part C of this title, section 271(b) of this Act, and sections 1105(f) and 1106(c) of title 31, United States Code, shall expire September 30, 1995; and (E) the second sentence of section 904(c) of the Congressional Budget and Impoundment Control Act of 1974 and the final sentence of section 904(d) of that Act.[1627]

(c) OASDI Trust Funds. -- The amendments made by part D shall apply as provided in such part.

[1626] Section 13112(b) of the Budget Enforcement Act amended subsection (b) to read as it does now. *See infra* p. 626. Before enactment of the Budget Enforcement Act, subsection (b) read as follows:

> (b) Expiration. --
>
> (1) Part C of this title, and the other provisions contained in or added by this title which are listed in paragraph (2), shall expire September 30, 1993.
>
> (2) The other provisions referred to in paragraph (1) are as follows:
>
> (A) section 3(7) of the Congressional Budget and Impoundment Control Act of 1974 and the second sentence of section 3(6) of such Act (as added by section 201(a)(1) of this joint resolution);
>
> (B) sections 301(i) and 304(b) of the Congressional Budget Act of 1974 and the portion of section 311(a) of such Act which begins with "or, in the Senate" and ends with "paragraph (2) of such subsection)" (as added by section 201(b) of this joint resolution);
>
> (C) sections 1105(f) and 1106(c) of title 31, United States Code (as added by sections 241(b) and 242(b) of this joint resolution); and
>
> (D) section 271(b) of this joint resolution.

The Budget Enforcement Act moved much of the matter to which the old subsection (b) referred to title VI of the Congressional Budget Act (*see supra* pp. 251-279), which section 607 of that Act makes clear applies only to fiscal years 1991 through 1995. *See supra* p. 279.

[1627] Section 13208(b) of the Budget Enforcement Act added this final expiration, beginning with "and (E)." *See infra* 644. This addition made more sense in the format of subsection (b) as it existed before enactment of the Budget Enforcement Act (*see supra* note 1626), but Congress clearly intended that the sentences referred to expire at the same time as part C of Gramm-Rudman-Hollings.

THE BUDGET ENFORCEMENT ACT OF 1990

TITLE XIII
BUDGET ENFORCEMENT

SEC. 13001. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title. -- This title may be cited as the "Budget Enforcement Act of 1990".[1628]

[1628] The Budget Enforcement Act of 1990, Pub. L. No. 101-508, tit. XIII, 104 Stat. _____, _____ (Nov. 5, 1990); H.R. Conf. Rep. No. 101-964, 101st Cong., 2d Sess. 603-63 (1990); 136 Cong. Rec. H12,589-605 (Oct. 26, 1990).

The statement of managers accompanying the conference report on the Budget Enforcement Act explained the purposes of the Act generally:

> Budget Enforcement Act of 1990
>
> The conference agreement adds new enforcement mechanisms for discretionary spending[,] entitlements, and rece[ip]ts to preserve the deficit reduction achieved by this Act over the next five years. The conference agreement adds a pay-as-you-go mechanism to ensure that any new entitlement or receipt legislation will not increase the deficit.The conference agreement also sets forth limits (caps) on discretionary spending provided in the annual appropriations process for each of fiscal years 1991 through 1995, and enforces these through a mechanism to require across-the-board cuts within any category to make up for any overages. To enforce deficit targets in fiscal years 1994 and 1995, the conference agreement extends the existing Gramm-Rudman-Hollings mechanism through fiscal year 1995, but with new procedures to allow adjustment for revised economic and technical estimates, in 1994 and 1995 at the President's option.

H.R. Conf. Rep. No. 101-964, 101st Cong., 2d Sess. 1,151 (1990).

For legislative history of the Budget Enforcement Act in the Senate, see generally H.R. Conf. Rep. No. 101-964, 101st Cong., 2d Sess. 1,151-218 (1990) (statement of managers provisions on the Budget Enforcement Act); 136 Cong. Rec. S15,822-40 (Oct. 18, 1990) (Senate debate on the Senate version of what would become the Budget Enforcement Act); H.R. 5835, 101st Cong., 2d Cong., 136 Cong. Rec. S15,868, S15,985-99 (Oct. 18, 1990) (the Senate version of what would become the Budget Enforcement Act).

Although a President's statement upon signing a piece of legislation has no validity as legislative history, as the President issues it after Congress has exercised the legislative powers that article I, section 1 of the Constitution vests exclusively with Congress, the

(continued...)

[1628](...continued)
following are excerpts from President Bush's statement upon signing the Omnibus Budget Reconciliation Act of 1990, of which the Budget Enforcement Act is part:

> **Statement on Signing the Omnibus Budget Reconciliation Act of 1990**
> *November 5, 1990*
>
> Today I am signing H.R. 5835, the "Omnibus Budget Reconciliation Act of 1990," the centerpiece of the largest deficit reduction package in history and an important measure for ensuring America's long-term economic growth. This Act is the result of long, hard work by the Administration and the Congress. No one got everything he or she wanted, but the end product is a compromise that merits enactment.
>
> H.R. 5835, and the discretionary spending caps associated with it, will achieve nearly $500 billion -- almost half a trillion dollars -- in deficit reduction over the next 5 years. Over 70 percent of that deficit reduction derives from outlay reductions; less than 30 percent from revenue increases. In addition, the Act enacts significant budget process reforms to ensure that the agreement is fulfilled and that budgetary discipline is extended and strengthened.
>
> *Entitlement Reforms.* The Act provides for the most comprehensive and substantial reform of mandatory "entitlement" programs ever -- about $100 billion in savings from restructuring and reforms in the following major programs:
>
> - Farm programs;
> - Federal housing programs;
> - Student loan programs;
> - Veterans programs;
> - Postal subsidies;
> - Federal employee benefits; and
> - Medicare.
>
> *Discretionary Program Caps.* The Act establishes 5-year caps on overall discretionary spending that will result in savings of over $180 billion. To keep domestic and international spending from growing any faster than inflation, the Act creates new automatic "mini-sequesters." The Act also provides for an orderly defense reduction without threatening national security.
>
> . . . .
>
> *Social Security.* Social Security is fully protected and taken off-budget.

(continued...)

[1628](...continued)

Enforcement and Process Reform. The Act contains the toughest enforcement system ever. The Gramm-Rudman-Hollings sequester process is extended and strengthened with caps, mini-sequesters, and a new "pay-as-you-go" system.

Credit Reform. The Act implements a new Federal accounting and budgeting system to expose and limit previously hidden (and rapidly growing) liabilities.

. . . .

This act creates the conditions that should allow future interest rates to be lower than they would be otherwise. Lower interest rates can benefit the entire economy. They can mean more housing starts; more Americans driving new cars; reductions in mortgage payments for homeowners; more long-term investment; greater productivity; and increased numbers of jobs.

In signing this landmark Act, I pledge the continuing best efforts of my Administration to maintain not only the letter, but the spirit of the new fiscal order for the Federal Government that is embodied in this agreement.

. . . .

I would also note certain constitutional difficulties in other titles of the Omnibus Budget Reconciliation Act. . . .

Further, the Constitution empowers the President to "recommend to [Congress] such Measures as he shall judge necessary and expedient." U.S. Const. Art. II, Sec. 3. Several sections of the Act raise constitutional difficulties by appearing or purporting to impose requirements that the executive branch submit legislative proposals of a predetermined kind. The executive branch has consistently treated provisions of this type as advisory rather than as mandatory, and to avoid a constitutional question will so construe the provisions at issue here.

George Bush

Statement on Signing the Omnibus Budget Reconciliation Act of 1990, 26 WEEKLY COMP. PRES. DOC. 1764-66 (Nov. 5, 1990).

The Budget Enforcement Act is title XIII of the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508 (Nov. 5, 1990). Titles I through XII do not relate to the budget process:

Title I. Agriculture and related programs.
Title II. Banking, housing, and related programs.
Title III. Student loans and labor provisions.
Title IV. Medicare, medicaid, and other health-related programs.
Title V. Income security, human resources, and related programs.
Title VI. Energy and environmental programs.

(continued...)

(b) TABLE OF CONTENTS. --

TITLE XIII -- BUDGET ENFORCEMENT

Subtitle A -- Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985 and Related Amendments

Sec. 13001. Short title; Table of contents.

PART I -- AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

Sec. 13101. Sequestration.

PART II -- RELATED AMENDMENTS

Sec. 13111. Temporary Amendments to the Congressional Budget Act of 1974.
Sec. 13112. Conforming amendments.

Subtitle B -- Permanent Amendments to the Congressional Budget and Impoundment Control Act of 1974

Sec. 13201. Credit Accounting.
Sec. 13202. Codification of Provision Regarding Revenue Estimates.
Sec. 13203. Debt Increase As Measure of Deficit; Display of Federal Retirement Trust Fund Balances.
Sec. 13204. Pay-as-you-go Procedures.
Sec. 13205. Amendments to Section 303.
Sec. 13206. Amendments to Section 308.
Sec. 13207. Standardization of Language Regarding Points of Order.
Sec. 13208. Standardization of Additional Deficit Control Provisions.
Sec. 13209. Codification of Precedent with regard to Conference Reports and Amendments between Houses.
Sec. 13210. Superseded Deadlines and Conforming Changes.
Sec. 13211. Definitions.
Sec. 13212. Savings Transfers between Fiscal Years.
Sec. 13213. Conforming Change to Title 31.
Sec. 13214. The Byrd Rule on Extraneous Matter in Reconciliation.

Subtitle C -- Social Security

[1628](...continued)
Title VII. Civil service and postal service programs
Title VIII. Veterans' programs.
Title IX. Transportation.
Title X. Miscellaneous user fees and other provisions.
Title XI. Revenue provisions.
Title XII. Pensions.

Sec. 13301. Off-budget Status of OASDI Trust Funds.
Sec. 13302. Protection of OASDI Trust Funds in the House of Representatives.
Sec. 13303. Social Security Firewall and Point of Order in the Senate.
Sec. 13304. Report to the Congress by the Board of Trustees of the OASDI Trust Funds Regarding the Actuarial Balance of the Trust Funds.
Sec. 13305. Exercise of Rulemaking Power.
Sec. 13306. Effective Date.

Subtitle D -- Treatment of Fiscal Year 1991 Sequestration

Sec. 13401. Restoration of Funds Sequestered.

Subtitle E -- Government-sponsored Enterprises

Sec. 13501. Financial Safety and Soundness of Government-Sponsored Enterprises.

Subtitle A
Amendments to the Balanced Budget and Emergency Deficit Control Act of 1985 and Related Amendments

PART I
AMENDMENTS TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985

SEC. 13101. SEQUESTRATION.

(a) Sections 250 Through 254. -- Sections 251 (except for subsection (a)(6)(I)) through 254 of part C of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901 et seq.) are amended to read as follows:

". . . . ."[1629]

(b) Section 250: Definitions. -- Paragraph (12) of section 257 of such Act (as in effect immediately before the date of enactment of this Act) is redesignated as a new paragraph (21)

[1629] *See supra* pp. 369-486.

of section 250(c).[1630]

(c) SECTION 255: EXEMPT PROGRAMS AND ACTIVITIES. --

(1) Section 255(a) of such Act is amended to read as follows:

> "(a) SOCIAL SECURITY BENEFITS AND TIER I RAILROAD RETIREMENT BENEFITS. -- Benefits payable under the old-age, survivors, and disability insurance program established under title II of the Social Security Act, and benefits payable under section 3(a), 3(f)(3), 4(a), or 4(f) of the Railroad Retirement Act of 1974, shall be exempt from reduction under any order issued under this part.".

(2) Section 255(e) of such Act is amended to read as follows:

> "(e) NON-DEFENSE UNOBLIGATED BALANCES. -- Unobligated balances of budget authority carried over from prior fiscal years, except balances in the defense category, shall be exempt from reduction under any order issued under this part.".

(3) Section 255(g)(1)(B) of such Act is amended by inserting after the item relating to Railroad retirement tier II the following:

> "Railroad supplemental annuity pension fund (60-8012-0-7--602);".

(4) Section 255 of such Act is amended by inserting at the end the following:

[1630] This paragraph defines the sale of an asset and the term "prepayment of a loan." *See supra* p. 379.

"(h)[1631] OPTIONAL EXEMPTION OF MILITARY PERSONNEL. --

"(1) The President may, with respect to any military personnel account, exempt that account from sequestration or provide for a lower uniform percentage reduction than would otherwise apply.

"(2) The President may not use the authority provided by paragraph (1) unless he notifies the Congress of the manner in which such authority will be exercised on or before the initial snapshot date for the budget year.".

(d) SECTION 256: EXCEPTIONS, LIMITATIONS, AND SPECIAL RULES. --

(1) Section 256(a) of such Act is amended to read as follows:

"(a) AUTOMATIC SPENDING INCREASES. -- Automatic spending increases are increases in outlays due to changes in indexes in the following programs:

"(1) National Wool Act;

"(2) Special milk program; and

"(3) Vocational rehabilitation basic

[1631] As subsections (h) and (i) already existed, the Budget Enforcement Act should have added a new subsection (j) at the end of section 255, or perhaps have inserted the new subsection (h) in place of the existing subsection (f), which at least some drafters of the Budget Enforcement Act intended to repeal.

> State grants.
>
> In those programs all amounts other than the automatic spending increases shall be exempt from reduction under any order issued under this part.".

(2) Section 256 of such Act is amended by redesignating subsection (b) as subsection (h), subsection (c) as subsection (b), subsection (e) as subsection (f), subsection (f) as subsection (c), subsection (h) as subsection (i), and subsection (k) as subsection (e), by repealing subsections (i) and (l), and by inserting at the end the following:

". . . . ."[1632]

(3) Section 256 of such Act is amended by striking "section 252" each place it appears and by inserting "section 254".

(4) Section 256(c) (as redesignated) of such Act is amended by inserting after the first sentence the following: "No State's matching payments from the Federal Government for foster care maintenance payments or for adoption assistance maintenance payments may be reduced by a percentage exceeding the applicable domestic sequestration percentage.".

(5) Section 256(d)(1) of such Act is amended to read as follows:

> "(1) CALCULATION OF REDUCTION IN INDIVIDUAL PAYMENT AMOUNTS. -- To achieve the total percentage reduction in those programs required by sections 252 and 253, and notwithstanding section 710 of the Social Security

---

[1632] This paragraph added subsections (k) and (l) to section 256 of Gramm-Rudman-Hollings. *See supra* pp. 524-528.

Act, OMB shall determine, and the applicable Presidential order under section 254 shall implement, the percentage reduction that shall apply to payments under the health insurance programs under title XVIII of the Social Security Act for services furnished after the order is issued, such that the reduction made in payments under that order shall achieve the required total percentage reduction in those payments for that fiscal year as determined on a 12-month basis.".

(6) Section 256(d)(2)(C) of such Act is repealed.

(e) THE BASELINE. -- (1) Section 257 of such Act is amended to read as follows:

". . . . ."[1633]

(2) Section 251(a)(6)(I) of such Act (as in effect immediately before the date of enactment of this Act) is redesignated as section 257(e) of such Act. Section 257(e) is amended by striking "assuming, for purposes of this paragraph and subparagraph (A)(i) of paragraph (3), that the" and inserting "The".

(f) Such Act is amended by inserting after section 257 the following:

". . . . ."[1634]

(g) Such Act is amended by inserting after section 258A the following:

[1633] *See supra* pp. 529-541.

[1634] This subsection added sections 258 and 258A of Gramm-Rudman-Hollings. *See supra* pp. 543-561.

"* * * * *"[1635]

[1635] This subsection added sections 258B and 258C of Gramm-Rudman-Hollings. *See supra* pp. 565-582.

PART II
RELATED AMENDMENTS

SEC. 13111. TEMPORARY AMENDMENTS TO THE CONGRESSIONAL BUDGET ACT OF 1974.

Title VI of the Congressional Budget Act of 1974 is amended to read as follows:

"\. . . . ."[1636]

[1636] *See supra* pp. 251-279.

SEC. 13112. CONFORMING AMENDMENTS.

(a) CONFORMING AMENDMENTS TO THE CONGRESSIONAL BUDGET AND IMPOUNDMENT CONTROL ACT OF 1974. --

(1) TABLE OF CONTENTS. -- Section 1(b) of the Congressional Budget and Impoundment Control Act of 1974 is amended to reflect the new section numbers and headings resulting from amendments made by this title.

(2) SECTION 3.-- Section 3 of such Act is amended --

(A)[1637] by striking paragraphs (6), (7), and (8) and inserting the following:

". . . . ."[1638]

(3) SECTION 202. -- Section 202(a)(1) and the second sentence of 202(f)(1) of such Act are amended by striking "budget authority" and inserting "new budget authority" .

(4) SECTION 300. -- Section 300 of such Act is amended by striking "First Monday after January 3" and by inserting "First Monday in February".

(5) SECTION 301(d). -- Section 301(d) of such Act is amended by striking "On or before February 25 of each year" and inserting "Within 6 weeks after the President submits a budget under section 1105(a) of title 31, United States Code".

(6) SECTION 302(a). -- Section 302(a)(2) of such Act is amended by striking "the House of Representatives and".

[1637] This is so in the original, even though there is no subparagraph (B).

[1638] *See supra* pp. 16-18

(7) SECTION 302(f). -- Section 302(f)(2) of such Act is amended --

(A) by inserting after "in excess of" the following: "(A)";

(B) by striking "under subsection (b)" and inserting "under subsection (a), or (B) the appropriate allocation (if any) of such outlays or authority reported under subsection (b)"; and

(C) by inserting at the end the following:

> "Subparagraph (A) shall not apply to any bill, resolution, amendment, motion, or conference report that is within the jurisdiction of the Committee on Appropriations.".

(8) SECTION 304. -- Section 304 of such Act is amended by striking subsection (b) and by striking "(c)" and inserting "(b)".

(9) SECTION 310(g). -- Section 310(g) of such Act is amended by striking "resolution pursuant" and inserting "joint resolution pursuant" and by striking "254(b)" and inserting "258C".

(10) SECTION 311(a). -- Section 311(a) of such Act is amended by striking "or, in the Senate" and all that follows thereafter through "paragraph (2) of such subsection" and inserting "except in the case that a declaration of war by the Congress is in effect".

(11) SECTION 904(a). -- Section 904(a) of such Act is amended by striking "and" after "III", by inserting ", V, and VI (except section 601(a))" after "IV", and by striking "606,".

(b) CONFORMING AMENDMENT TO THE BALANCED BUDGET AND EMERGENCY DEFICIT CONTROL ACT OF 1985. -- Subsection (b) of section 275 of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended to read as follows:

> **"(b) EXPIRATION. -- Part C of this title, section 271(b) of this Act, and sections 1105(f) and 1106(c) of title 31, United States Code, shall expire September 30, 1995.".**

(c) CONFORMING AMENDMENTS TO SECTION 1105 OF TITLE 31, UNITED STATES CODE. --

> **(1) SECTION 1105(a). -- Section 1105(a) of title 31, United States Code, is amended by striking "On or before the first Monday after January 3 of each year (or on or before February 5 in 1986)" and by inserting "On or after the first Monday in January but not later than the first Monday in February of each year."[1639]**
>
> **(2) SECTION 1105(f). -- Section 1105(f) of title 31, United States Code, is amended to read as follows:**
>
> > **"(f) The budget transmitted pursuant to**

[1639] This is so in the original; the period appears within the quotation mark, when it should appear outside.

The statement of managers accompanying the conference report on the Budget Enforcement Act hedges the changes made by this paragraph:

> XI. PRESIDENT'S BUDGET SUBMISSION
>
> The conference agreement includes a provisions permitting the President to delay submission to Congress of The Budget of the United States Government from the present requirement of "on or before the first Monday after January 3 of each year" to not later than the first Monday in February. The conferees intended that this increased flexibility be used very rarely to meet only the most pressing exigencies. An orderly and timely budget process requires that Presidential submissions be made on or before the first Monday after January 3 whenever possible. The conferees expect that Presidential submission dates will comply with the January deadline.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,171 (1990).

> subsection (a) for a fiscal year shall be prepared in a manner consistent with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 that apply to that and subsequent fiscal years.".

(d) CONFORMING AMENDMENTS TO THE RULES OF THE HOUSE OF REPRESENTATIVES. --

(1) CROSS-REFERENCE. -- Clause 1(e)(2) of rule X of the Rules of the House of Representatives is amended by striking "(a)(4)".

(2) CROSS-REFERENCE. -- Clause 1(e)(2) of rule X of Rules of the House of Representatives is amended by striking "Act, and any resolution pursuant to section 254(b) of the Balanced Budget and Emergency Deficit Control Act of 1985" and inserting "Act".

(3) JURISDICTION. -- Clause 1(j) of rule X of the Rules of the House of Representatives is amended by inserting after paragraph (6) the following new paragraph:

> "(7) Measures providing exemption from reduction under any order issued under part C of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(4) ALLOCATIONS. -- Clause 4(h) of rule X of the Rules of the House of Representatives is amended by inserting "or section 602 (in the case of fiscal years 1991 through 1995)" after "section 302".

(5) MULTIYEAR REVENUE ESTIMATES. -- Clause 7(a)(1) of rule XIII of the Rules of the House of Representatives is amended by striking ", except that, in the case of measures affecting the revenues, such reports shall require only an estimate of the gain or loss in revenues for a one-year period".

(e) CONFORMING AMENDMENT TO THE FULL EMPLOYMENT AND BALANCED GROWTH ACT OF 1978. -- Section 103(a) of the Full Employment and Balanced Growth Act of 1978 (15 U.S.C. 1022(a) is amended by striking "transmit to the Congress during the first twenty days of each regular session" and inserting "annually transmit to the Congress not later than 10 days after the submission of the budget under section 1105(a) of title 31, United States Code".

(f) FILING REQUIREMENT. -- After the convening of the One Hundred Second Congress, the chairman of the Committee on the Budget of the Senate shall file with the Senate revised and outyear budget aggregates and allocations under section 602(a) consistent with this Act.[1640]

[1640] *See* 137 CONG. REC. S2,240-41 (Feb. 21, 1991) (statement of Chairman Sasser).

Subtitle B
Permanent Amendments to the Congressional Budget and Impoundment Control Act of 1974

SEC. 13201. CREDIT ACCOUNTING.

(a) Credit Accounting. -- Title V of the Congressional Budget Act of 1974 is amended to read as follows:

". . . . ."[1641]

(b) Conforming Amendments. --

(1) Definition. -- Section 3(2) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The term includes the cost for direct loan and loan guarantee programs, as those terms are defined by title V".

(2) Point of order for fiscal year 1991. -- Effective January 1, 1991, for fiscal year 1991 only, section 302(f)(2) of the Congressional Budget Act of 1974 is amended by inserting after "new budget authority" the following: "or new credit authority".

(3) Sunset of point of order in fiscal year 1992. -- Effective for fiscal years beginning after September 30, 1991, section 302 of the Congressional Budget Act is amended --

---

[1641] *See supra* pp. 225-250.

(A) in subsection (a)(1) --

(i) by striking "total entitlement authority, and total credit authority" and inserting "and total entitlement authority";

(ii) by striking "such entitlement authority, or such credit authority" and inserting "or such entitlement authority"; and

(iii) by striking "entitlement authority, and credit authority" and inserting "and entitlement authority";

(B) in subsection (a)(2), by striking "total budget outlays, total new budget authority and new credit authority" and inserting "total budget outlays and total new budget authority";

(C) in subsection (b)(1)(A), by striking "budget outlays, new budget authority, and new credit authority" and inserting "budget outlays and new budget authority";

(D) in subsection (c) --

(i) in paragraph (1), by inserting "or" at the end thereof; and

(ii) by striking "or (3) new credit authority for a fiscal year;"; and

(E) in subsection (f)(1) --

(i) by striking "year, new entitlement authority effective during such fiscal year, or new credit authority for such fiscal year," and inserting "year or new entitlement authority

effective during such fiscal year,"; and

(ii) by striking "authority, new entitlement authority, or new credit authority" and inserting "authority or new entitlement authority".

SEC. 13202. CODIFICATION OF PROVISION REGARDING REVENUE ESTIMATES.

(a) REDESIGNATION. -- Section 201 of the Congressional Budget Act of 1974 is amended by redesignating subsection (f) as subsection (g).

(b) TRANSFER. -- The text of section 273 of the Balanced Budget and Emergency Deficit Control Act of 1985 is transferred to section 201 of the Congressional Budget Act of 1974 and is designated as subsection (g).[1642]

(c) CONFORMING CHANGES. -- Section 201(g)[1643] of the Congressional Budget Act of 1974 (as redesignated by subsection (b)) is amended by --

(1) striking "this title and the Congressional Budget and Impoundment Control Act of 1974" and inserting "this Act"; and

(2) inserting "REVENUE ESTIMATES. --" before the first sentence.

[1642] This is so in the original. It should read "subsection (f)."

[1643] This is so in the original. It should read "Section 201(f)."

SEC. 13203. DEBT INCREASE AS MEASURE OF DEFICIT; DISPLAY OF FEDERAL RETIREMENT TRUST FUND BALANCES.

Section 301(b) of the Congressional Budget Act of 1974 is amended by striking "and" at the end of paragraph (3), by striking the period at the end of paragraph (4) and inserting a semicolon, and by adding at the end the following new paragraphs:

> **"(5) include a heading entitled 'Debt Increase as Measure of Deficit' in which the concurrent resolution shall set forth the amounts by which the debt subject to limit (in section 3101 of title 31 of the United States Code) has increased or would increase in each of the relevant fiscal years; and**
>
> **"(6) include a heading entitled 'Display of Federal Retirement Trust Fund Balances' in which the concurrent resolution shall set forth the balances of the Federal retirement trust funds.".**

SEC. 13204. PAY-AS-YOU-GO PROCEDURES.

Section 301(b) of the Congressional Budget Act of 1974 (as amended by section 13203) is further amended by striking "and" at the end of paragraph (5), by striking the period at the end of paragraph (6) and inserting a semicolon, and by adding at the end the following new paragraphs:

"(7) set forth pay-as-you-go procedures for the Senate whereby --

"(A) budget authority and outlays may be allocated to a committee for legislation that increases funding for entitlement and mandatory spending programs within its jurisdiction if that committee or the committee of conference on such legislation reports such legislation, if, to the extent that the costs of such legislation are not included in the concurrent resolution on the budget, the enactment of such legislation will not increase the deficit (by virtue of either deficit reduction in the bill or previously passed deficit reduction) in the resolution for the first fiscal year covered by the concurrent resolution on the budget, and will not increase the total deficit for the period of fiscal years covered by the concurrent resolution on the budget;

"(B) upon the reporting of legislation pursuant to subparagraph (A), and again upon the submission of a conference report on such legislation (if a conference report is submitted), the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this paragraph;

"(C) such revised allocations, functional levels, and aggregates shall be considered for the purposes of this Act as allocations, functional levels, and aggregates contained in the concurrent resolution on the budget; and

"(D) the appropriate committee shall report appropriately revised allocations pursuant to section 302(b) to carry out this paragraph; and

"(8) set forth procedures to effectuate pay-as-you-go in the House of Representatives.".

SEC. 13205. AMENDMENTS TO SECTION 303.

(a) IN GENERAL. -- Section 303(a) of the Congressional Budget Act of 1974 is amended --

(1) by repealing paragraph (5),

(2) by striking "or" at the end of paragraph (4),

(3) by inserting after paragraph (4) the following new paragraphs:

"(5) in the Senate only, new spending authority (as defined in section 401(c)(2)) for a fiscal year; or

"(6) in the Senate only, outlays,"; and

(4) by inserting after "the concurrent resolution on the budget for such fiscal year" the following: "(or, in the Senate, a concurrent resolution on the budget covering such fiscal year)".

(b) EXCEPTIONS.--Section 303(b) of such Act is amended--

(1) by striking "Subsection (a)" and inserting "(1) In the House of Representatives, subsection (a)" and by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(2) by inserting at the end the following new paragraph:

"(2) In the Senate, subsection (a) does not apply to any bill or resolution making advance appropriations for the fiscal year to which the concurrent resolution applies and

the two succeeding fiscal years.".

SEC. 13206. AMENDMENTS TO SECTION 308.

(a) REPORTS AND SUMMARIES OF CONGRESSIONAL BUDGET ACTIONS. -- (1) Section 308(a)(1) of that Act is amended --

(1) in the matter preceding subparagraph (A) by inserting after "fiscal year" the following: "(or fiscal years)";

(2) in subparagraph (A) by inserting after "fiscal year" the following: "(or fiscal years)"; and

(3) in subparagraph (C) by inserting after "such fiscal year" the following: "(or fiscal years)".

(b) CONFORMING AMENDMENT. -- Section 308(a)(2) of that Act is amended by inserting after "fiscal year" the following: "(or fiscal years)".

(c) ADDITIONAL CONFORMING AMENDMENT. -- Section 308(b)(1) of that Act is amended --

(1) by striking "for a fiscal year" in the first sentence and inserting "for each fiscal year covered by a concurrent resolution on the budget"; and

(2) by striking "such fiscal year" in the second sentence and inserting "the first fiscal year covered by the appropriate concurrent resolution".

SEC. 13207. STANDARDIZATION OF LANGUAGE REGARDING POINTS OF ORDER.

(a) In General. -- The Congressional Budget Act of 1974 is amended --

(1)(A) in section 302(c), by striking "bill or resolution, or amendment thereto" and inserting "bill, joint resolution, amendment, motion, or conference report";

(B) in section 302(f)(1), by inserting "joint" before "resolution" the second and third places it appears and in section 302(f)(2), by striking "bill or resolution (including a conference report thereon), or any amendment to a bill or resolution" and inserting "bill, joint resolution, amendment, motion, or conference report";

(C) in section 303(a), by striking "bill or resolution (or amendment thereto)" and inserting "bill, joint resolution, amendment, motion, or conference report";

(D) in section 306, by striking "bill or resolution, and no amendment to any bill or resolution" and inserting "bill, resolution, amendment, motion, or conference report";

(E) in section 311(a), by --

(i) striking "bill, resolution, or amendment" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "or any conference report on any such bill or resolution";

(F) in section 401(a), by --

(i) striking "bill, resolution, or conference report" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "(or any amendment which provides such new spending authority)";

(G) in section 401(b)(1), by --

(i) striking "bill or resolution" and inserting "bill, joint resolution, amendment, motion, or conference report, as reported to its House"; and

(ii) striking "(or any amendment which provides such new spending authority)"; and

(H) in section 402(a), by --

(i) striking "bill, resolution, or conference report" and inserting "bill, joint resolution, amendment, motion, or conference report"; and

(ii) striking "or any amendment"; and

(2) in section 302(f)(2), by striking "outlays or new budget authority" and inserting "outlays, new budget authority, or new spending authority (as defined in section 401(c)(2))".

(b) POINTS OF ORDER IN THE SENATE. --

(1) Title III of the Congressional Budget Act of 1974 is amended by adding at the end the following new section:

"EFFECTS OF POINTS OF ORDER

"SEC. 312. POINTS OF ORDER IN THE SENATE AGAINST AMENDMENTS BETWEEN THE HOUSES. -- Each provision of this Act that establishes a point of order against an amendment also establishes a point of order in the Senate against an amendment between the Houses. If a point of order under this Act is raised in the Senate against an amendment between the Houses, and the Presiding Officer sustains the point of order, the effect shall be the same as if the Senate had disagreed to the amendment.

"(b) EFFECT OF A POINT OF ORDER ON A BILL IN THE SENATE. -- In the Senate, if the Chair sustains a point of order under this Act against a bill, the Chair shall then send the bill to the committee of appropriate jurisdiction for further consideration.".

(2) The table of contents for the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item relating to section 311 the following new item:

"Sec. 312. Effect of points of order.".

(c) ADJUSTMENT IN THE SENATE OF ALLOCATIONS AND AGGREGATES TO REFLECT CHANGES PURSUANT TO SECTION 310(c). -- Section 310(c) of the Congressional Budget Act of 1974 is amended by --

(1) inserting "(1)" before "Any committee";

(2) redesignating subparagraphs (A) and (B) of paragraph (1) as clauses (i) and (ii), respectively;

(3) redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively; and

(4) inserting at the end the following new paragraph:

"(2)(A) Upon the reporting to the Committee on the Budget of the Senate of a recommendation that shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of that committee may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

"(B) Upon the submission to the Senate of a conference report recommending a reconciliation bill or resolution in which a committee shall be deemed to have complied with such directions solely by virtue of this subsection, the chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under section 302(a) and revised functional levels and aggregates to carry out this subsection.

"(C) Allocations, functional levels, and aggregates revised pursuant to this paragraph shall be considered to be allocations, functional levels, and aggregates contained in the concurrent resolution on the budget pursuant to section 301.

"(D) Upon the filing of revised allocations pursuant to this paragraph, the reporting committee shall report revised allocations pursuant to section 302(b) to carry out this subsection.".

(d) RECONCILIATION INSTRUCTIONS. -- Section 310(a)(4) of the Congressional Budget Act of 1974 is amended by inserting after "(3)" the following: "(including a direction to achieve deficit reduction)".

SEC. 13208. STANDARDIZATION OF ADDITIONAL DEFICIT CONTROL PROVISIONS.

(a) Section 904 of the Congressional Budget Act of 1974 is amended --

(1) by amending subsection (c) to read as follows:

"(c) WAIVER. -- Sections 305(b)(2), 305(c)(4), 306, 904(c), and 904(d) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn. Sections 301(i), 302(c), 302(f), 310(d)(2), 310(f), 311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985 may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn."; and

(2) in subsection (d) by inserting at the end the following:

"An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 305(b)(2), 305(c)(4), 306, 904(c), and 904(d). An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under sections 301(i), 302(c), 302(f), 310(d)(2), 310(f), 311(a), 313, 601(b), and 606(c) of this Act and sections 258(a)(4)(C), 258A(b)(3)(C)(i), 258B(f)(1), 258B(h)(1), 258B(h)(3), 258C(a)(5), and 258C(b)(1) of the Balanced Budget and Emergency Deficit Control Act of 1985".

(b) Section 275(b)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985 is amended --

(1) in subparagraph (C), by striking the final word "and";

(2) in subparagraph (D), by striking the final period and inserting "; and"; and

(3) by inserting at the end the following new subparagraph:

"(E) the second sentence of section 904(c) of the Congressional Budget and Impoundment Control Act of 1974 and the final sentence of section 904(d) of that Act."

SEC. 13209. CODIFICATION OF PRECEDENT WITH REGARD TO CONFERENCE REPORTS AND AMENDMENTS BETWEEN HOUSES.

Section 305(c) of the Congressional Budget Act 1974 is amended --

(1) in paragraph (1) --

(A) by striking the first sentence; and

(B) by inserting after "consideration of the conference report" the following: "on any concurrent resolution on the budget (or a reconciliation bill or resolution)"; and

(2) in paragraph (2), by inserting "(or a message between Houses)" after "conference report" each place it appears.

SEC. 13210. SUPERSEDED DEADLINES AND CONFORMING CHANGES.

The Congressional Budget Act of 1974 is amended --

(1) in section 305, by striking subsection (d) and redesignating subsection (e) as subsection (d); and

(2) in section 310(f), by striking paragraph (1) and by striking "(2) POINT OF ORDER IN THE HOUSE OF REPRESENTATIVES. --".

SEC. 13211. DEFINITIONS.

(a) Budget Authority. -- Section 3(2) of the Congressional Budget and Impoundment Control Act of 1974 is amended to read as follows:

"(2) Budget authority and new budget authority. --

"(A) In general. -- The term 'budget authority' means the authority provided by Federal law to incur financial obligations, as follows:

"(i) provisions of law that make funds available for obligation and expenditure (other than borrowing authority), including the authority to obligate and expend the proceeds of offsetting receipts and collections;

"(ii) borrowing authority, which means authority granted to a Federal entity to borrow and obligate and expend the borrowed funds, including through the issuance of promissory notes or other monetary credits;

"(iii) contract authority, which means the making of funds available for obligation but not for expenditure; and

"(iv) offsetting receipts and collections as negative budget authority, and the reduction thereof as positive budget authority.

"(B) LIMITATIONS ON BUDGET AUTHORITY. -- With respect to the Federal Hospital Insurance Trust Fund, the Supplementary Medical Insurance Trust Fund, the Unemployment Trust Fund, and the railroad retirement account, any amount that is precluded from obligation in a fiscal year by a provision of law (such as a limitation or a benefit formula) shall not be budget authority in that year.

"(C) NEW BUDGET AUTHORITY. -- The term 'new budget authority' means, with respect to a fiscal year --

"(i) budget authority that first becomes available for obligation in that year, including budget authority that becomes available in that year as a result of a reappropriation; or

"(ii) a change in any account in the availability of unobligated balances of budget authority carried over from a prior year, resulting from a provision of law first effective in that year;

and includes a change in the estimated level of new budget authority provided in indefinite amounts by existing law.".

(b) EFFECTIVE DATE. -- The amendment made by subsection (a) shall be effective for fiscal year 1992 and subsequent fiscal years.

SEC. 13212. SAVINGS TRANSFERS BETWEEN FISCAL YEARS.

Section 202 of Public Law 100-119 is repealed.[1644]

[1644] The statement of managers accompanying the conference report on the Budget Enforcement Act explains the repeal briefly by reference to an earlier edition of this volume: "The conference agreement also repeals section 202 of public law 100-119, the exceptions to which the conferees believe had come to be abused (*see* W. Dauster, CONGRESSIONAL BUDGET ACT ANNOTATED 567-77 (1990)) . . . ." H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,170 (1990).

Section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 prohibited counting as savings shifts from one year to another. Section 202 provided:

> SEC. 202. PROHIBITION OF COUNTING AS SAVINGS THE TRANSFER OF GOVERNMENT ACTIONS FROM ONE YEAR TO ANOTHER
>
> (a) IN GENERAL. -- Except as otherwise provided in this section, any law or regulation that has the effect of transferring an outlay, receipt, or revenue of the United States from one fiscal year to an adjacent fiscal year shall not be treated as altering the deficit or producing net deficit reduction in any fiscal year for purposes of the Congressional Budget Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985.
>
> (b) EXCEPTIONS. -- Subsection (a) shall not apply if the law making the transfer stipulates that such transfer --
>
> (1) is a necessary (but secondary) result of a significant policy change;
>
> (2) provides for contingencies; or
>
> (3) achieves savings made possible by changes in program requirements or by greater efficiency of operations.

Section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, Pub. L. No. 100-119, § 202, 101 Stat. 754, 784 (Sept. 29, 1987) (codified at 2 U.S.C. § 909) (repealed 1990).

An editorial in the *Washington Post* (written after the adoption of section 202) described the evil that Congress originally intended section 202 to address:

> **Floating Paydays**
>
> OUR LEADERS keep trying to do us the ultimate favor of cutting the budget deficit without cutting the budget, and we suppose it's churlish not

(continued...)

[1644] (...continued)

> to be grateful. Their latest effort involves the floating payday.
>
> Federal employees tend to be paid two weeks at a time. For a lot of them this year, that will mean a payday the first week of October. That turns out to represent both a problem and an opportunity. The problem is that the fiscal year begins Oct. 1; the early October paychecks would thus normally be charged to fiscal 1990, and be part of the 1990 deficit. The opportunity is to pay these employees early, on Friday, Sept. 29. That would doubtless make the employees happier and move the expenditure into fiscal 1989, all in the same deft stroke. Since no one is paying that much attention to the 1989 deficit any more, as a political proposition the cost would simply disappear.
>
> Of course grown-ups would not resort to games like these, you say. Wrong. The Department of Defense is already doing it. Secretary Dick Cheney ordered the forward creep himself, under authority Congress gave the department a couple of years ago when the virtues of the step first dawned on the armed services committees.
>
> . . . .
>
> It's an understandable point of view. Our own suggestion is that they simply give all federal employees their full year's pay for fiscal 1990 on Sept. 30 (with a suitable discount for the advance, of course). The fiscal 1990 deficit would positively melt away, and we would all live happily ever after.

Floating Paydays, Wash. Post, June 26, 1989, at A10, col. 1. (c) The Washington Post. Reprinted with permission.

What became section 202 of the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987 first appeared in the Senate leadership compromise version of the revision of Gramm-Rudman-Hollings. The Senate adopted the amendment (to H.J. Res. 324) containing the provision on July 31, 1987, by a vote of 71 to 21. The original Senate-passed version read as follows:

> PROHIBITION OF COUNTING AS SAVINGS
> THE TRANSFER OF GOVERNMENT ACTIONS
> FROM ONE YEAR TO ANOTHER
>
> Sec. 225. (a) For purposes of titles III and IV of the Congressional Budget and Impoundment Control Act of 1974 and the Balanced Budget and Emergency Deficit Control Act of 1985, any action of the United States Government that is transferred from one fiscal year to an adjacent fiscal year, including a payment, expenditure, receipt of funds from the sale of an asset, and the collection of revenues and other receipts, shall not be treated as causing a reduction in the deficit for the fiscal year from which the transfer was made except to the extent that such transfer reduces the sum of the deficits for the two fiscal years by at least $100,000,000. For purposes of this section, an action shall be considered to have been transferred when the action is taken in a different fiscal year and such change in the year is not --

(continued...)

[1644](...continued)

(1) a necessary but secondary result of a significant policy change;

(2) to provide for contingencies; or

(3) to achieve savings made possible by or through changes in requirements or greater efficiency of operations.

(b) For purposes of the application of this section to the Congressional Budget and Impoundment Control Act of 1974, the level of outlays and the deficit for a fiscal year shall be determined on the basis of estimates made by the Committee on the Budget of the House of Representatives or the Senate, as the case may be.

H.J. Res. 324, 100th Cong., 1st Sess. (July 31, 1987) (as received in the House with Senate amendments).

The conference report describes the section:

7. Prohibition Against Counting Certain Actions as Savings

Current Law

Under current practice, the deficit for a fiscal year can be reduced by transferring certain actions by the Federal Government between that fiscal year and another fiscal year, even if the deficit for the other fiscal year is increased as a result.

Senate Amendment

The Senate amendment (Section 225) provides that a transfer of any action by the Federal Government -- including payments, expenditures, asset sales, and the collection of revenues and receipts -- from one fiscal year to an adjacent fiscal year shall not be treated as reducing the deficit for the fiscal year from which the transfer is made unless, as a result of the transfer, the deficit for the period covered by both fiscal years is reduced by at least $100 million.

The Senate amendment specifies the conditions for determining (for purposes of this requirement) whether an action by the Federal Government constitutes a transfer and further specifies that its provisions shall be enforced on the basis of estimates made by the House and Senate Budget Committees.

Conference Agreement

The conference agreement prohibits the savings resulting from the transfer of outlays, receipts, or revenues from one year to another to be counted as changing the deficit, except for certain types of transfers identified in law. The conferees recognize that the determinations required under this

(continued...)

[1644](...continued)

provision for the 1974 Budget Act will be based on estimates made by the House and Senate Budget Committees.

H.R. Conf. Rep. No. 100-313, 100th Cong., 1st Sess. 65-66 (1987), *reprinted in* 1987 U.S. CODE CONG. & ADMIN. NEWS 739, 765-66.

In conference, House conferees insisted on the substitution of a new mechanism for applying the exceptions by which the law in question could direct its own scorekeeping. This led to the two problems that section 202 created.

By providing this mechanism for applying the exception, the law impliedly prohibited all transfers that did not contain the magic words applying the exception. Even if the transfer was a necessary (but secondary) result of a significant policy change, did provide for contingencies, or did achieve savings made possible by changes in program requirements or by greater efficiency of operations, the section by its terms would apply to prohibit scorekeepers from counting the savings.

The language thus created a trap for the unwary Senator. Unless the Senator knew about the section and thought about the issue while drafting the legislation in question, the section stood as a snare waiting to catch the legislation. The result led to increased disrespect for the budget process.

The second problem that the language of section 202 created was the one to which the statement of managers accompanying the conference report on the Budget Enforcement Act referred: The exceptions invited overuse. As the exception required simply that the subject legislation specify that it was for one of the good purposes listed in order to avoid the sanction of the prohibition, the exception was applied to a number of shifts between years that clearly did not fall within the exception as intended. Section 202 became an easily-avoided prohibition on budget gimmickry. For cases where the law cited "a necessary (but secondary) result of a significant policy change," see, e.g., Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 11001 (Dec. 19, 1989); H.R. CONF. REP. No. 101-386, 101st Cong., 1st Sess. 405-06 (1989); 125 CONG. REC. H9,446 (Nov. 21, 1989) ("any provision of this Act"); Act making supplemental appropriations for the Department of Veterans Affairs for the fiscal year ending September 30, 1989, and for other purposes, Pub. L. No. 101-45, 103 Stat. 97, 108 (June 30, 1989) (Advance Deficiency Payments); Stuart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628, § 1004(b), 102 Stat. 3224, 3264 (Nov. 7, 1988) (Prohibition of Reduction of Section 8 Contract Rents); Rural Development--Agriculture Appropriations Act, 1989, Pub. L. No. 100-460, 102 Stat. 2229, 2253 (Oct. 1, 1988) (Conservation Reserve Program); Department of Housing and Urban Development--Independent Agencies Appropriations Act, 1989, Pub. L. No. 100-404, 102 Stat. 1014, 1026 (Aug. 19, 1988) (NASA Research and Development); Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 4031(c), 101 Stat. 1330, 1330-76 (Dec. 22, 1987) (Payment Cycle Standards for medicare); Joint Resolution making continuing appropriations for the fiscal year 1988, and for other purposes, Pub. L. No. 100-202, 101 Stat. 1329, 1329-202 (Dec. 22, 1987) (NASA Research and Development). For a case where the law cited "changes in program requirements," see Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 7004(a), 101 Stat. 1330, 1330-280 (Dec. 22, 1987) (Cash Sales of Properties Acquired Through Foreclosures). In something less than full compliance with this provision, one stipulation simply specified that "amendments made by this title shall be considered an exemption under section (b)." *See*

(continued...)

SEC. 13213. CONFORMING CHANGE TO TITLE 31.

(a) Limitations on Expending and Obligating.[1645] -- Section 1341(a)(1) of title 31, United States Code, is amended --

(1) in subparagraph (A), by striking the final word "or";

(2) in subparagraph (B), by striking the final period and inserting a semicolon; and

(3) by adding at the end the following new subparagraphs:

> **"(C) make or authorize an expenditure or obligation of funds required to be sequestered under section 252[1646] of the Balanced Budget and Emergency Deficit Control Act of 1985; or**

[1644] (...continued)
Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, § 6004, 101 Stat. 1330, 1330-278 (Dec. 22, 1987) (Civil Service and Postal Service Programs).

Senator Sanford's bill S. 101, 101st Cong., 1st Sess., 135 Cong. Rec. S170, S425-29 (Jan. 25, 1989), proposed repealing the exception but leaving the prohibition intact. The Senate-passed version of the Budget Enforcement Act followed this tact. *See* H.R. 5835, 101st Cong., 2d Cong., 136 Cong. Rec. S15,868, S15,998 (Oct. 18, 1990) (as amended by the Senate). The conferees opted for the simpler path of simply repealing section 202. This result leaves the decision to count or not to count a shift between years to those whom the law elsewhere designates as scorekeepers.

[1645] The statement of managers accompanying the conference report on the Budget Enforcement Act briefly explains the changes made by this subsection: "The conference report also makes conforming changes to title 31 of the United States Code to make clear that funds sequestered are not available for expenditure . . . ." H.R. Conf. Rep. No. 101-964, 101st Cong., 2d Sess. 1,170 (1990).

[1646] This reference, which stayed as it was in the Senate-passed version of the bill, should have been changed to "254" when the conference agreement changed the section covering reports and orders to section 254.

"(D) involve either government in a contract or obligation for the payment of money required to be sequestered under section 252[1647] of the Balanced Budget and Emergency Deficit Control Act of 1985.".

(b) Limitation on Voluntary Services. -- Section 1342 of title 31, United States Code, is amended by inserting at the end the following: "As used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."[1648]

[1647] This reference, which stayed as it was in the Senate-passed version of the bill, should have been changed to "254" when the conference agreement changed the section covering reports and orders to section 254.

[1648] The statement of managers accompanying the conference report on the Budget Enforcement Act explains the changes made by this subsection:

> The conference report also makes conforming changes to title 31 of the United States Code to make clear . . . that ongoing, regular operations of the Government cannot be sustained in the absence of appropriations, except in limited circumstances. These changes guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress.

H.R. Conf. Rep. No. 101-964, 101st Cong., 2d Sess. 1,170 (1990).

The managers referred to the opinion of Attorney General Benjamin R. Civiletti of January 16, 1981, regarding the authority of the Government to continue certain functions during a temporary lapse in appropriations. The opinion interpreted section 1342 of title 31, which stated (in relevant part):

> **§ 1342. Limitation on voluntary services**
>
> An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law *except for emergencies involving the safety of human life or the protection of property*.

31 U.S.C. § 1342 (1988) (emphasis added).

(continued...)

SEC. 13214. THE BYRD RULE ON EXTRANEOUS MATTER IN RECONCILIATION.

(a) The Byrd Rule on Extraneous Matter in Reconciliation. -- Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985 is amended --

(1) in subsection (a) --

(A) by inserting after "(a)" the following: "In General. --";

(B) by inserting after "1974" the following: "(whether that bill or resolution originated in the Senate or the House) or section 258C of the Balanced Budget and Emergency Deficit Control Act of 1985";

(2) in subsection (d) by inserting after "(d)" the following: "Extraneous Provisions. --";

(3) in subsection (d)(1)(A) by inserting before the semicolon "(but a provision in which outlay decreases or revenue increases exactly offset outlay increases or revenue decreases shall not be considered extraneous by virtue of this subparagraph)";

(4) in subsection (d)(1)(D) by striking "and" after the semicolon;

[1648](...continued)

The opinion spun the highlighted language out to cover more than it would appear to cover on its face. To qualify for the exception (according to the opinion) "there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property." In sum, the President would have been able to rely on this opinion to continue many public safety functions without seeking appropriations from Congress. The change limits the President more closely to the language of section 1342.

(5) in subsection (d)(1)(E), by striking the period at the end and inserting "; and";

(6) in subsection (d)(1) by adding at the end the following new subparagraph:

"(F) a provision shall be considered extraneous if it violates section 310(g).";

(7) in subsection (d)(2), by inserting after "A" the first place it appears the following: "Senate-originated"; and

(8) by adding at the end the following new subsections:

". . . ."[1649]

(b) Transfer of Byrd Rule. -- (1) Section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended by subsection (a), is transferred to the end of title III of the Congressional Budget Act of 1974, and designated as section 313 of that Act.

(2) Section 313 of the Congressional Budget Act of 1974 is amended by --

(A) adding at the beginning the following center heading:

"EXTRANEOUS MATTER IN RECONCILIATION LEGISLATION";

(B) striking subsection (b), subsection (c), and the last sentence of subsection (a); and

(C) redesignating subsections (d) (e), (f), and (g) as subsections (b), (c), (d) and (e), respectively.

[1649] *See supra* pp. 172-183.

(3) Subsection (a) of the first section of Senate Resolution 286 (99th Congress, 1st Session), as amended by Senate Resolution 509 (99th Congress, 2d Session) is enacted as subsection (c) of section 313 of the Congressional Budget Act of 1974.

(4) Section 313 of the Congressional Budget Act of 1974 is amended --

(A) in subsections (a), (b)(1)(A), and (c), by striking "of the Congressional Budget Act of 1974";

(B) in subsection (a), by striking "(d)" and inserting "(b)";

(C) in subsection (b)(2)(C), by adding "or" at the end thereof;

(D) in subsection (c), by striking "when" and inserting "When";

(E) in subsection (c)(1), by striking "(d)(1)(A) or (d)(1)(D) of section 20001 of the Consolidated Omnibus Budget Reconciliation Act of 1985" and inserting "(b)(1)(A), (b)(1)(B), (b)(1)(D), (b)(1)(E), or (b)(1)(F)"; and

(F) in subsection (c)(2), by striking "this resolution" and inserting "this subsection".

(5) The table of contents for the Congressional Budget and Impoundment Control Act of 1974 is amended by adding after the item for section 312 the following new item:

"Sec. 313. Extraneous matter in reconciliation legislation.".

Subtitle C
Social Security[1650]

SEC. 13301. OFF-BUDGET STATUS OF OASDI TRUST FUNDS.

(a) EXCLUSION OF SOCIAL SECURITY FROM ALL BUDGETS. -- Notwithstanding any other provision of law, the receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall not be counted as new budget authority, outlays, receipts, or deficit or surplus for purposes of --

(1) the budget of the United States Government as submitted by the President,

(2) the congressional budget, or

(3) the Balanced Budget and Emergency Deficit Control Act of 1985.

(b) EXCLUSION OF SOCIAL SECURITY FROM CONGRESSIONAL BUDGET. -- Section 301(a) of the Congressional Budget Act of 1974 is amended by adding at the end the following: "The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program established under title II of the Social Security Act or the related provisions of the Internal Revenue Code of 1986 in the surplus or deficit totals required by this subsection or in

---

[1650] For legislative history of the amendments made by subtitle C, see *infra* note 1651 (at the end of section 13301).

any other surplus or deficit totals required by this title.".[1651]

[1651] The statement of managers accompanying the conference report on the Budget Enforcement Act explains generally the amendments made by subtitle C:

VI. TREATMENT OF SOCIAL SECURITY

Current law

Under current law, the Social Security trust funds are off-budget but are included in deficit estimates and calculations made for purposes of the sequestration process. However, Social Security benefit payments are exempt from any sequestration order.

Section 310(g) of the Congressional Budget Act of 1974 prohibits the consideration of reconciliation legislation "that contains recommendations" with respect to Social Security. (A motion to waive this point of order requires 60 votes in the Senate and a simple majority in the House.)

House bill

The House bill reaffirms the off-budget status of Social Security and removes the trust funds -- excluding interest receipts -- from the deficit estimates and calculations made in the sequestration process. The House bill retains the current law exemption of Social Security benefit payments from any sequestration order.

The House bill creates a "fire wall" point of order (as free-standing legislation) to prohibit the consideration of legislation that would change the actuarial balance of the Social Security trust funds over a 5-year or 75-year period. In the case of legislation decreasing Social Security revenues, the prohibition would not apply if the legislation also included an equivalent increase in Medicare taxes for the period covered by the legislation.

Senate amendment

The Senate amendment also reaffirms the off-budget status of Social Security and removes the trust funds from the deficit estimates and calculations made in the sequestration process. However, unlike the House bill, the Senate amendment removes the gross trust fund transactions -- including interest receipts -- from the sequestration deficit calculations. The Senate amendment also retains the current law exemption of Social Security benefit payments from any sequestration order.

The Senate amendment also creates a procedural fire wall to protect Social Security financing, but does so by expanding certain budget enforcement provisions of the Congressional Budget Act of 1974. The Senate amendment expands the prohibition in Section 310(g) of the Budget Act to specifically protect Social Security financing, prohibits the consideration of a reported budget resolution calling for a reduction in Social Security surplus, and includes Social Security in the enforcement procedures under Sections 302 and 311 of the Budget Act. The Senate amendment also requires the Secretary of

(continued...)

[1651](...continued)

Health and Human Services to provide an actuarial analysis of any legislation affecting Social Security, and generally prohibits the consideration of legislation lacking such an analysis.

For more on the budgetary treatment of Social Security under current law and historically, see SENATE COMM. ON THE BUDGET, SOCIAL SECURITY PRESERVATION ACT, S. REP. NO. 101-426, 101ST Cong. 2d Sess. (1990).

Conference agreement

The conference agreement incorporates the Senate position on the budgetary treatment of the Social Security trust funds, reaffirming their off-budget status ng: "The concurrent resolution shall not include the outlays and revenue totals of the old age, survivors, and disability insurance program establishedhe conference agreement provides that the "fire wall" procedure proposed by the House shall apply only to the House and that the "fire wall" procedures proposed by the Senate shall apply only to the Senate.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,160-61 (1990).

For legislative history of the effort to remove Social Security from the budget, see generally 136 CONG. REC. 15,777-81 (Oct. 18, 1990) (Senate debate on the related amendment to the Omnibus Budget Reconciliation Act of 1990); SENATE COMM. ON THE BUDGET, SOCIAL SECURITY PRESERVATION ACT, S. REP. NO. 101-426, 101ST Cong. 2d Sess. (1990); CONGRESSIONAL RESEARCH SERV., SOCIAL SECURITY, MEDICARE, AND THE UNIFIED BUDGET, S. Print No. 83, 99th Cong., 1st Sess. (Sen. Comm. on Budget Print 1985); *Concurrent Resolution on the Budget for Fiscal Year 1989: Hearings Before the Senate Comm. on the Budget*, 100th Cong., 2d Sess. 85-160 (1988) (S. Hrg. No. 578, Vol. III) (hearing March 24, 1988, on "Social Security, Deficits, and the Baby Boomers' Retirement"); *Budget Reform Proposals: Joint Hearings Before the Senate Comm. on Governmental Affairs & Comm. on the Budget*, 101st Cong., 1st Sess. 30-42 (S. Hrg. No. 101-560) (1989) (testimony of Sen. Heinz Oct. 18, 1989, on S. 1752); 129 CONG. REC. S3,587-603 (Mar. 22, 1983) (Heinz amendment to remove Social Security trust funds from the unified budget); 135 CONG. REC. S15,137-47 (Nov. 7, 1989) (statements of Sen. Heinz, Majority Leader Mitchell, and others regarding scheduling of legislation regarding Social Security); 136 CONG. REC. S7,935-36, S7,949-50, S7,956-59, S7,974-79 (June 14, 1990) (same); 136 CONG. REC. S8,153-56 (June 18, 1990) (statement of Sen. Heinz on his amendment requiring Congressional action on Social Security before action on the debt limit); 136 CONG. REC. S8,192-210 (June 19, 1990) (debate on the Heinz amendment); S. 2211, 100th Cong., 2d Sess., 134 CONG. REC. S3,038-39 (Mar. 24, 1988) (Sen. Sanford); S. 2914, 100th Cong., 2d Sess., 134 CONG. REC. S16,889-95 (Oct. 19, 1988) (Sen. Moynihan); S. 101, 101st Cong., 1st Sess., 135 CONG. REC. S170, S425-29 (Jan. 25, 1989) (Sen. Sanford); S. 219, 101st Cong., 1st Sess., 135 CONG. REC. S173, S636-37 (Jan. 25, 1989) (Sen. Moynihan); S. 240, 101st Cong., 1st Sess., 135 CONG. REC. S173, S682-84 (Jan. 25, 1989) (Sen. Heinz); S. 401, 101st Cong., 1st Sess., 135 CONG. REC. S1,413, S1,421-22 (Feb. 9, 1989) (Sen. Hollings); S. 852, 101st Cong., 1st Sess., 135 CONG. REC. S4,384, S4,419 (Apr. 19, 1989) (Sen. Bryan); S. 1752, 101st Cong., 1st Sess., 135 CONG. REC. S13,297, S13,299-300 (Oct. 12, 1989) (Sen. Heinz); S. 1785, 101st Cong., 1st Sess., 135 CONG. REC. S13,893 (Oct. 24, 1989) (Sen. Moynihan); S. 1795, 101st Cong., 1st Sess., 135 CONG. REC. S14,129, S14,137-38 (Oct. 25, 1989) (Sen. Hollings).

(continued...)

[1651] (...continued)

Some have argued that section 13301 conflicts with the listing of discretionary accounts set forth in the joint statement of managers accompanying the conference report on the Budget Enforcement Act. *See supra* p. 394. In a letter to the Director of the Office of Management and Budget, the Chairman of the Budget Committee argued that the congressional intent is plain:

> I am writing to express my concern regarding a possible interpretation of the Budget Enforcement Act of 1990 with respect to the budgetary treatment of Social Security. I understand that your Office is considering whether the administrative expenses of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall be counted in the deficit and as part of the domestic discretionary caps for purposes of the Balanced Budget and Emergency Deficit Control Act of 1985 (Gramm-Rudman-Hollings). I wish to express in the strongest terms my view that these administrative expenses should not be included in either the deficit or the domestic discretionary cap for purposes of Gramm-Rudman-Hollings.
>
> Section 13301(a) of the Budget Enforcement Act states:
>
> . . . .
>
> The all-inclusive breadth of this language could not be more clear. The subsection heading speaks of "exclusion . . . from *all* budgets." The operative language is unambiguous: "the receipts and disbursements . . . shall not be counted." Paragraph (3) specifically mentions the Gramm-Rudman-Hollings law as one of the purposes for which Social Security must be excluded.
>
> The joint statement of managers accompanying the conference report on the legislation that includes the Budget Enforcement Act similarly makes clear the intent of section 13301:
>
> > The conference agreement incorporates the Senate position on the budgetary treatment of the Social Security trust funds, reaffirming their off-budget status and removing *all their transactions* from the deficit estimates and calculations made in the sequestration process.
>
> H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,161 (1990) (emphasis added).
>
> I understand that it may be argued that statement of managers language specifically includes references to the Social Security trust funds as two account items in a 39-page listing of accounts incorporated by reference in the definition of the term "category" for purposes of the Gramm-Rudman-Hollings law. It would strain credulity to argue that this reference overcomes the plain language of section 13301(a). Although I concede that some conflict between these two provisions may exist, that conflict must be resolved in favor of implementing the intent of Congress as evident in section 13301(a).

(continued...)

[1651](...continued)

> The legislative intent to remove Social Security completely from all budgets is clear. The language of section 13301 indicates that it must apply "[n]otwithstanding any other provision of law." The Senate debated the removal of Social Security at length. The Senate voted 98-2 in favor of the amendment -- sponsored by Senators Hollings, Heinz, and Moynihan, among others -- that specifically took Social Security out of the Gramm-Rudman-Hollings process. (*See* 136 CONG. REC. 15,777-81 (Oct. 18, 1990).) Congressional examination of the 39-page listing in the statement of managers is nowhere evident in the debates.
>
> I urge you to follow section 13301(a) of the Budget Enforcement Act and remove the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance Trust Funds from the budget in their entirety. I recommend that the President use his authority under section 251(b)(1)(A) of the Gramm-Rudman-Hollings law to recognize any adjustments to the discretionary spending limits that such a position would require as a change in a concept or definition. I believe that this is the approach needed to ensure that all of Social Security is taken off budget.

Letter from Sen. Jim Sasser to Richard G. Darman (Jan. 4, 1991).

The acting general counsel of the Office of Management and Budget replied to Chairman Sasser as follows:

> You expressed the view that the administrative costs of the social security program should be excluded from the domestic discretionary spending category.
>
> We recognize that the Omnibus Budget Reconciliation Act (OBRA) contains a provision generally excluding the social security trust funds from the budget as well as the gramm-Rudman-Hollings Act. Social security was previously excluded from the budget, but not from the deficit calculations under the Gramm-Rudman-Hollings Act (GRH).
>
> However, other provisions of OBRA specifically address whether social security administrative expenses are included in the domestic discretionary spending category. The portion of the social security trust funds that are annually appropriated as administrative expenses are specifically identified in the list of domestic discretionary programs that is part of the Joint Statement of Managers Accompanying the Conference Report on OBRA. OBRA expressly provides that discretionary appropriations in each of the three categories "shall be those so designated in the joint statement of managers." Section 250 (c) (4) (A) of GRH, as amended by OBRA. Because of this express designation of social security administrative expenses in the list of accounts that are required to be included in the domestic discretionary category identified in the law, we have concluded that the expenses must be so included.
>
> While the OBRA provision excluding Social Security (section

(continued...)

[1651] (...continued)
13301(1)) applies as a general matter, it does not directly conflict with the specific OBRA provisions directing the treatment of one element of social security only for certain purposes. For example, Section 13303 of OBRA specifically requires that the congressional budget include social security revenue and outlays for purposes of enforcement of the Senate social security "firewall" points of order. This specific provision should not be disregarded simply because the general social security exclusion provision states that social security outlays and receipts "shall not be counted" for purposes of "the congressional budget." Section 13301 (a). The same is true of the specific provision on administrative expenses. Indeed, even if there were a direct conflict between the general and specific provisions, the result would be the same. It is a basic principle of statutory construction that "Where there is inescapable conflict between general and specific terms or provisions of a statute, the specific will prevail." 2A Sutherland, Statutory Construction Sec. 46.05 at p. 92 (4th Ed.).

The congressional Budget Office (CBO) included social security administrative expenses within the domestic discretionary category in its Final Sequestration Report for Fiscal Year 1991, issued on November 6, 1990. OMB did the same in its Final OMB Sequester Report To The President and Congress for Fiscal Year 1991, issued on November 9, 1990. The Comptroller General of the United States, in his statutorily required report on the extent to which the CBO and OMB reports complied with law, issued December 10, 1990, did not state that OMB or CBO failed to comply with OBRA or committed any error by including social security administrative expenses in the domestic discretionary category. General Accounting Office, "The Budget for Fiscal Year 1991 -- Compliance with the Balanced Budget and Emergency Deficit Control Act of 1985" B-221498 (December 10, 1990).

In view of the specific direction on the subject contained in OBRA, OMB will continue to classify social security program administrative expenses as within the domestic discretionary spending category.

Letter from Robert G. Damus to Sen. Jim Sasser (Jan. 24, 1991).

SEC. 13302. PROTECTION OF OASDI TRUST FUNDS IN THE HOUSE OF REPRESENTATIVES.

(a) IN GENERAL. -- It shall not be in order in the House of Representatives to consider any bill or joint resolution, as reported, or any amendment thereto or conference report thereon, if, upon enactment --

(1)(A) such legislation under consideration would provide for a net increase in OASDI benefits of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and

(B) such legislation under consideration does not provide at least a net increase, for such 75-year period, in OASDI taxes of the amount by which the net increase in such benefits exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period,

(2)(A) such legislation under consideration would provide for a net increase in OASDI benefits (for the 5-year estimating period for such legislation under consideration),

(B) such net increase, together with the net increases in OASDI benefits resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000, and

(C) such legislation under consideration does not provide at least a net increase, for the 5-year estimating period for such legislation under consideration, in OASDI taxes which, together with net increases in OASDI taxes resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net increase derived under subparagraph (B) exceeds $250,000,000;

(3)(A) such legislation under consideration would provide for a net decrease in OASDI taxes of at least 0.02 percent of the present value of future taxable payroll for the 75-year period utilized in the most recent annual report of the Board of Trustees provided pursuant to section 201(c)(2) of the Social Security Act, and

(B) such legislation under consideration does not provide at least a net decrease, for such 75-year period, in OASDI benefits of the amount by which the net decrease in such taxes exceeds 0.02 percent of the present value of future taxable payroll for such 75-year period, or

(4)(A) such legislation under consideration would provide for a net decrease in OASDI taxes (for the 5-year estimating period for such legislation under consideration),

(B) such net decrease, together with the net decreases in OASDI taxes resulting from previous legislation enacted during that fiscal year or any of the previous 4 fiscal years (as estimated at the time of enactment) which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, exceeds $250,000,000, and

(C) such legislation under consideration does not

provide at least a net decrease, for the 5-year estimating period for such legislation under consideration, in OASDI benefits which, together with net decreases in OASDI benefits resulting from such previous legislation which are attributable to those portions of the 5-year estimating periods for such previous legislation that fall within the 5-year estimating period for such legislation under consideration, equals the amount by which the net decrease derived under subparagraph (B) exceeds $250,000,000.

(b) APPLICATION. -- In applying paragraph (3) or (4) of subsection (a), any provision of any bill or joint resolution, as reported, or any amendment thereto, or conference report thereon, the effect of which is to provide for a net decrease for any period in taxes described in subsection (c)(2)(A) shall be disregarded if such bill, joint resolution, amendment, or conference report also includes a provision the effect of which is to provide for a net increase of at least an equivalent amount for such period in medicare taxes.

(c) DEFINITIONS. -- For purposes of this subsection:

(1) The term "OASDI benefits" means the benefits under the old-age, survivors, and disability insurance programs under title II of the Social Security Act.

(2) The term "OASDI taxes" means --

(A) the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1986, and

(B) the taxes imposed under chapter 1 of such Code (to the extent attributable to section 86 of such Code).

(3) The term "medicare taxes" means the taxes imposed under sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1986.

(4) The term "previous legislation" shall not include legislation enacted before fiscal year 1991.

(5) The term "5-year estimating period" means, with respect to any legislation, the fiscal year in which such legislation becomes or would become effective and the next 4 fiscal years.

(6) No provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of OASDI taxes referred to in paragraph (2)(B) unless such provision changes the income tax treatment of OASDI benefits.

SEC. 13303. SOCIAL SECURITY FIREWALL AND POINT OF ORDER IN THE SENATE.

(a) Concurrent Resolution on the Budget. -- Section 301(a) of the Congressional Budget Act of 1974 is amended by striking "and" at the end of paragraph (4), by striking the period at the end of paragraph (5) and inserting a semicolon; and by adding after paragraph (5) the following new paragraphs:

> **"(6) For purposes of Senate enforcement under this title, outlays of the old-age, survivors, and disability insurance program established under title II of the Social Security Act for the fiscal year of the resolution and for each of the 4 succeeding fiscal years; and**
>
> **"(7) For purposes of Senate enforcement under this title, revenues of the old-age, survivors, and disability insurance program established under title II of the Social Security Act (and the related provisions of the Internal Revenue Code of 1986) for the fiscal year of the resolution and for each of the 4 succeeding fiscal years.".**

(b) Point of Order. -- Section 301(i) of the Congressional Budget Act of 1974 is amended to read as follows:

> **"(i) It shall not be in order in the Senate to consider any concurrent resolution on the budget as reported to the Senate that would decrease the excess of social security revenues over social security outlays in any of the fiscal years covered by the concurrent resolution. No change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.".**

(c) COMMITTEE ALLOCATIONS. --

(1) Section 302(a)(2) of the Congressional Budget Act of 1974 is amended by inserting after "appropriate levels of" the following: "social security outlays for the fiscal year of the resolution and for each of the 4 succeeding fiscal years,".

(2) Section 302(f)(2) of the Congressional Budget Act of 1974 is amended by inserting before the period the following: "or provides for social security outlays in excess of the appropriate allocation of social security outlays under subsection (a) for the fiscal year of the resolution or for the total of that year and the 4 succeeding fiscal years".

(3) Section 302(f)(2) of such Act is further amended by adding at the end the following: "In applying this paragraph --

> "(A) estimated social security outlays shall be deemed to be reduced by the excess of estimated social security revenues (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) over the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget;
>
> "(B) estimated social security outlays shall be deemed increased by the shortfall of estimated social security revenues (including social security revenues provided for in the bill, resolution, amendment, or conference report with respect to which this paragraph is applied) below the appropriate level of social security revenues specified in the most recently adopted concurrent resolution on the budget;

and

"(C) no provision of any bill or resolution, or any amendment thereto or conference report thereon, involving a change in chapter 1 of the Internal Revenue Code of 1986 shall be treated as affecting the amount of social security revenues unless such provision changes the income tax treatment of social security benefits.

The Chairman of the Committee on the Budget of the Senate may file with the Senate appropriately revised allocations under subsection (a) and revised functional levels and aggregates to reflect the application of the preceding sentence. Such revised allocations, functional levels, and aggregates shall be considered as allocations, functional levels, and aggregates contained in the most recently agreed to concurrent resolution on the budget, and the appropriate committees shall report revised allocations pursuant to subsection (b).".

(d) POINT OF ORDER UNDER SECTION 311. -- (1) Subsection (a) of section 311(a) of the Congressional Budget Act of 1974 is redesignated as subsection (a)(1) and paragraphs (1), (2), and (3) are redesignated as subparagraphs (A), (B), and (C).

(2) Section 311(a) of such Act is amended by inserting at the end the following new paragraph:

". . . ."[1652]

[1652] This paragraph added section 311(a)(2) of the Congressional Budget Act. *See supra* pp. 154-156. (The original lacks the final period after the closing quotation mark.)

SEC. 13304. REPORT TO THE CONGRESS BY THE BOARD OF TRUSTEES OF THE OASDI TRUST FUNDS REGARDING THE ACTUARIAL BALANCE OF THE TRUST FUNDS.

Section 201(c) of the Social Security Act (42 U.S.C. 401(c)) is amended by inserting after the first sentence following clause (5) the following new sentence: "Such statement shall include a finding by the Board of Trustees as to whether the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, individually and collectively, are in close actuarial balance (as defined by the Board of Trustees).".

SEC. 13305. EXERCISE OF RULEMAKING POWER.

This title and the amendments made by it are enacted by the Congress --

(1) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such they shall be considered as a part of the rules of each House, respectively, or of that House to which they specifically apply, and such rules shall supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change such rules (so far as relating to such House) at any time, in the same manner, and to the same extent as in the case of any other rule of such House.

SEC. 13306. EFFECTIVE DATE.

Sections 13301, 13302, and 13303 and any amendments made by such sections shall apply with respect to fiscal years beginning on or after October 1, 1990. Section 13304 shall be effective for annual reports of the Board of Trustees issued in or after calendar year 1991.

Subtitle D
Treatment of Fiscal Year 1991 Sequestration

SEC. 13401. RESTORATION OF FUNDS SEQUESTERED.[1653]

(a) Order Rescinded. -- Upon the enactment of this Act, the orders issued by the President on August 25, 1990, and October 15, 1990, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 are hereby rescinded.

(b) Amounts Restored. -- Any action taken to implement the orders referred to in subsection (a) shall be reversed, and any sequestrable resource that has been reduced or sequestered by such orders is hereby restored, revived, or released and shall be available to the same extent and for the same purpose as if the orders had not been issued.

(c) Furloughed Employees. -- (1) Federal employees furloughed as a result of the lapse in appropriations from midnight October 5, 1990, until the enactment of House Joint Resolution 666 shall be compensated at their standard rate of compensation for the period during which there was a lapse in appropriations.

(2) All obligations incurred in anticipation of the appropriations made and authority granted by House Joint Resolution 666 for the purposes of maintaining the essential level of activity to protect life and property and bringing about orderly termination of government functions are hereby ratified and

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[1653] For legislative history of this section, see *infra* note 1654 (at the end of the section).

approved if otherwise in accord with the provisions of that Act.[1654]

[1654] The statement of managers accompanying the conference report on the Budget Enforcement Act explains section 13401 generally:

> IV. RESTORATION OF FUNDS SEQUESTERED
>
> *Current law*
>
> Under current law, an initial sequestration order, issued August 25, withholds budgetary resources at the sequestered levels effective October 1. A final sequestration order, issued October 15, permanently cancels budgetary resources, effective that date, and supersedes the initial sequestration order. After their issuance, initial and final sequestration orders can be rescinded and sequestered funds restored only upon the enactment of a law specifically directing those actions. The sequester for fiscal year 1991 was suspended temporarily by four continuing appropriations measures enacted in October: H.J. Res. 655 (P.L. 101-403), H.J. Res. 666 (P.L. 101-412), H.J. Res. 677 (P.L. 101-444), and H.J. Res. 681 (P.L. 101-461).
>
> *House bill*
>
> The House bill rescinds both the initial and final sequestration order for fiscal year 1991, reverses any action taken to implement the orders, and restores any sequestered budgetary resources.
>
> *Senate amendment*
>
> The Senate amendment proposes identical language.
>
> *Conference agreement*
>
> The conference agreement incorporates the House and Senate language rescinding the fiscal year 1991 sequester and restoring sequestered amounts.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,157 (1990).

Contrast with the treatment for fiscal year 1991 the only limited restoration of funds sequestered in fiscal year 1990. Section 11002 of the Omnibus Budget Reconciliation Act of 1989 provides:

> SEC. 11002. RESTORATION OF FUNDS SEQUESTERED.
>
> (a) ORDER RESCINDED. -- (1) Upon the issuance of a new final order by the President under subsection (b)(3), the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is rescinded.
>
> (2) Except as otherwise provided in sections 6001, 6101, and 6201, and

(continued...)

[1654](...continued)
subject to subsection (b), any action taken to implement the order issued by the President on October 16, 1989, shall be reversed, and any sequesterable budgetary resource that has been reduced or sequestered by such order is restored, revived, or released and shall be available to the same extent and for the same purpose is if an order had not been issued.

(3) For purposes of section 702(d) and 1101(c) of the Ethics Reform Act of 1989, the order issued by the President on October 16, 1989, pursuant to section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 is deemed to be rescinded on January 31, 1990.

(b) ADJUSTED REDUCTION. --

(1) Before the close of the fifteenth calendar day beginning after the date of enactment of this Act, the Director of OMB shall issue a revised report using the exact budget baseline set forth in the report of October 16, 1989, and following the requirements, specifications, definitions, and calculations required by the Balanced Budget and Emergency Deficit Control Act of 1985 for the final report issued under section 251(c)(2) for fiscal year 1990, except that the aggregate outlay reduction to be achieved shall be an amount equal to $16.1 billion multiplied by 130 divided by 365. Calculations made to carry out the preceding sentence shall take into account the reductions and cancellations achieved by paragraphs (2) and (3) and shall not be affected by subsection (d).

(2) Notwithstanding any provision of law other than this paragraph, the reductions and cancellations in the student loan programs described in section 256(c) of the Balanced Budget and Emergency Deficit Control Act of 1985 achieved by the order issued by the President on October 16, 1989, shall remain in effect through December 31, 1989, and no reductions or cancellations in such programs shall be made by the order issued under paragraph (4).

(3) Notwithstanding any provision of law other than this paragraph, any automatic spending increase suspended or cancelled by the order issued by the President on October 16, 1989, shall be paid at a rate that is 130/365ths less than the rate that would have been paid under the laws providing for such automatic spending increase.

(4) On the date that the Director submits a revised report to the President under paragraph (1) for fiscal year 1990, the President shall issue a new final order to make all of the reductions and cancellations specified in such report in conformity with section 252(a)(2) of the Balanced Budget and Emergency Deficit Control Act of 1985. Such order shall be deemed to have become effective on October 16, 1989.

(c) COMPLIANCE REPORT BY COMPTROLLER GENERAL. -- Before the
(continued...)

[1654] (...continued)
close of the thirtieth day beginning after the date the President issues a new final order under subsection (b)(4), the Comptroller General shall submit to the Congress and the President a compliance report setting forth the information required under section 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 with respect to such order.

(d) NO DOUBLE REDUCTION IN MEDICARE. -- With respect to items and services described in section 6001(a), 6101, or 6201(a) for periods for which reductions are made pursuant to the respective sections, no reduction shall be made under subsection (b).

Omnibus Budget Reconciliation Act of 1989, Pub. L. No. 101-239, § 11002, 103 Stat. 2106, 2490-91 (Dec. 19, 1989).

The conference report to accompany the Omnibus Budget Reconciliation Act of 1989 explains the treatment in fiscal year 1990:

SECTION 11002. RESTORATION OF FUNDS SEQUESTERED

Section 11002 provides for additional budget savings by retroactively replacing the President's October 16 sequester order with a new order. The new order exactly follows all the procedures, rules, definitions, calculations, and other requirements of the Balanced Budget and Emergency Deficit Reduction Act of 1985 (as amended) with one major and three minor exceptions.

The major exception is that, instead of the $16.1 billion in outlay reductions that were stated in the October 16 order, the new order shall be based on a required outlay reduction only 35.6 percent as large. The new order will be in effect for the entire fiscal year, but at a lower rate of reductions. Since the new order saves a smaller amount, the old order is rescinded and any amounts (beyond those needed to be saved under the new order) are restored. If, under the old order, individual payments or contracts were reduced, rebates will be made or contracts will be adjusted to reflect the smaller savings required by the new order.

The conferees are aware that, because of the application of the "crediting" rule in section 252(f) of the Balanced Budget Act, the stated $16.1 billion in savings in the President's October 16 order would actually have achieved $12.3 billion, according to CBO. Since that section also applies to this new order with regard to appropriation bills enacted after October 16, 1989, the new order will also achieve actual savings smaller than the apparent $5.75 billion -- an estimated $4.55 billion.

One minor exception applies to the Guaranteed Student Loan program. The Balanced Budget Act does not contain a mechanism to achieve different savings in that program when the size of the sequester is altered. Therefore, section 11002 provides that the GSL savings will be achieved by the full Balanced Budget Act savings in effect in the first three months of the year, with no reductions under the new order for the remainder of the year.

(continued...)

[1654] (...continued)
According to CBO, those three months will achieve more than 35.6 percent of the total amount of savings that would be achieved by a full-year sequester. The savings achieved during those three months will count as savings under the new order.

A second minor exception applies to Vocation Rehabilitation Basic State Grants and the Special Milk programs. The entitlement formulas in those programs are indexed to price increases; in the event of a sequester, the COLAs are frozen. Section 11002 overrides the COLA freeze that would otherwise be in place for the full year, and instead reduces the COLA by 35.6 percent. As with GSL's, the savings achieved by partial COLAs will count as savings under the new order.

Except as noted above, all the provisions of the Balanced Budget Act apply to the calculation and implementation of the new order. Specifically, it is still required that reductions in each program, project, or activity within a budget account be proportional to the reduction in the full account. However, since the new order is not technically the order of October 16, 1989, various requirements or procedures that are ancillary to that order do not apply. Specifically, the special Congressional procedures under section 258 of the Balanced Budget Act are not available, and the administration is not required to file a new accompanying message under section 252(a)(4) of the Act.

The final minor exception to the overlap between section 11002 and provisions in Title VI that achieve reconciliation savings by continuing the Medicare sequester under the original order of October 16 in full force for part of the year (e.g. through March 31, 1990, in the case of Part B Medicare). In order to prevent the Medicare sequester that would occur under this new order from applying on top of the Title VI sequester during the period when the two are concurrent, subsection (d) provides that during that period the Medicare cuts under Title XI will not take place. In effect, the continued Medicare cuts under Title VI (at a rate higher than the rate under Title XI) are deemed to achieve the Title XI Medicare savings during the period when the Title VI savings are in effect. After they expire, however, the Title XI Medicare savings will be in effect for the remainder of the year. This rule for the application of the Medicare reductions under Title XI is not taken into account in calculating the new OMB report and in the President's new order, although this rule then supercedes the President's new order with regard to Medicare cuts.

H.R. CONF. REP. No. 101-386, 101st Cong., 1st Sess. 942-44 (1989), *reprinted in* 1989 U.S. CODE CONG. & ADMIN. NEWS 3,018, 3,545-47.

Subtitle E
Government-sponsored Enterprises

SEC. 13501. FINANCIAL SAFETY AND SOUNDNESS OF GOVERNMENT-SPONSORED ENTERPRISES.[1655]

(a) DEFINITION. -- For purposes of this section, the terms "Government-sponsored enterprise" and "GSE" mean the Farm Credit System (including the Farm Credit Banks, Banks for Cooperatives, and Federal Agricultural Mortgage Corporation), the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Student Loan Marketing Association.[1656]

[1655] The statement of managers accompanying the conference report on the Budget Enforcement Act explains the state of the law prior to enactment of that Act:

> VIII. GOVERNMENT SPONSORED ENTERPRISES
>
> *Current law*
>
> – Congress has created several Government-sponsored enterprises or GSEs to help make credit more reliably available to farmers, homeowners, colleges, and students. Through federal charters provided in statute, GSEs are privately owned and operated, limited in their activities to specific economic sectors, and given certain benefits that help them accomplish their goals.
>
> Due to the public missions described in the charters of these entities, the Government does have an interest in the activities of the GSEs. While there is no explicit Federal backing for the GSEs, in 1987, the Government infused significant additional resources into the Farm Credit System when the system had financial difficulties. This Government financial assistance to a GSE and the problems of the Savings and Loan sector have generated increased interest in Congressional oversight of the GSEs.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,166 (1990).

[1656] Note that section 3(8) of the Congressional Budget Act provides a different definition of "Government-sponsored enterprise" for the purposes of that Act. *See supra* pp. 17-18. (Section 13112(a)(2)(A) of the Budget Enforcement Act amended section 3(8)

(continued...)

(b) TREASURY DEPARTMENT STUDY AND PROPOSED LEGISLATION. --

(1) The Department of the Treasury shall prepare and submit to Congress no later than April 30, 1991, a study of GSEs and recommended legislation.

(2) The study shall include an objective assessment of the financial soundness of GSEs, the adequacy of the existing regulatory structure for GSEs, the financial exposure of the Federal Government posed by GSEs, and the effects of GSE activities on Treasury borrowing.[1657]

[1656](...continued)
to read as it does now. *See supra* 624.)

The statement of managers accompanying the conference report on the Budget Enforcement Act explains this subsection:

House bill

Section 13501(a), of the House bill defined GSEs for this legislation to include the Farm Credit System (including Farm Credit Banks, Banks for Cooperatives, Federal Agricultural Mortgage Corporation, and the Farm Credit Insurance Corporation) the Federal Home Loan Bank System, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and Student Loan Marketing Association.

Senate amendment

The Senate had no similar provision.

Conference report

The conference report adopts the House language except that it deletes the reference to the Farm Credit Insurance Corporation which is an on-budget entity.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,166 (1990).

[1657] The statement of managers accompanying the conference report on the Budget Enforcement Act explains this subsection:

House bill

Subsection (b) mandates a Treasury study on the financial safety and
(continued...)

(c) CONGRESSIONAL BUDGET OFFICE STUDY. --

(1) The Congressional Budget Office shall prepare and submit to Congress no later than April 30, 1991, a study of GSEs.

(2) The study shall include an analysis of the financial risks each GSE assumes, how Congress may improve its understanding of those risks, the supervision and regulation of GSEs' risk management, the financial exposure of the Federal Government posed by GSEs, and the effects of GSE activities on Treasury borrowing. The study shall also include an analysis of alternative models for oversight of GSEs and of the costs and benefits of each alternative model to the Government and to the markets and beneficiaries served by GSEs.[1658]

[1657](...continued)
soundness of GSEs, the adequacy of the existing regulatory structure for GSEs, and the financial exposure of the Federal Government posed by GSEs. The Department of the Treasury shall prepare and submit to Congress no later than April 30, 1991, a study of GSEs and recommended legislation.

Senate amendment

Section 12254(a)(1) of the Senate amendment contained an essentially identical provision.

Conference report

The conference report accepts the House provision but expands the scope of the Treasury study to analyze the impact of GSE activities on Treasury borrowing.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,166-69 (1990).

[1658] The statement of managers accompanying the conference report on the Budget Enforcement Act explains this subsection:

House bill

Subsection (c) mandates a Congressional Budget Office study on GSEs due to Congress no later than April 30, 1991. The study will includes an analysis of the financial risks each GSE assumes, how Congress may

(continued...)

(d) ACCESS TO RELEVANT INFORMATION. --

(1) For the studies required by this section, each GSE shall provide full and prompt access to the Secretary of the Treasury and the Director of the Congressional Budget Office to its books and records and other information requested by the Secretary of the Treasury or the Director of the Congressional Budget Office.

(2) In preparing the studies required by this section, the Secretary of the Treasury and the Director of the Congressional Budget Office may request information from, or the assistance of, any Federal department or agency authorized by law to supervise the activities of a GSE.[1659]

[1658](...continued)
improve its understanding of those risks, the supervision and regulation of GSEs' risk management, and the financial exposure of the Federal Government posed by GSEs. The study will also include an analysis of alternative models for oversight of GSEs of the costs and benefits of each alternative model to the Government and to the markets and beneficiaries served by GSEs.

Senate amendment

The Senate amendment contains a mandate for a similar study.

Conference report

The conference report accepts the House language with the scope expanded to include an analysis of the effects of GSE activities on Treasury borrowing.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,167 (1990).

[1659] The statement of managers accompanying the conference report on the Budget Enforcement Act explains this subsection:

House bill

Section (d) provides the Treasury and the CBO full access to GSE books and records and other information as requested by the Secretary of the Treasury or the Director of the Congressional Budget Office. This subsection also allowed the Secretary of the Treasury and the Director of the Congressio-

(continued...)

(e) CONFIDENTIALITY OF RELEVANT INFORMATION.[1660] --

(1) The Secretary of the Treasury and the Director of the Congressional Budget Office shall determine and maintain the confidentiality of any book, record, or information made available by a GSE under this section in a manner consistent with the level of confidentiality established for the material by the GSE involved.

(2) The Department of the Treasury shall be exempt from section 552 of title 5, United States Code, for any book, record, or information made available under subsection (d) and determined by the Secretary of the Treasury to be confidential under this subsection.

(3) Any officer or employee of the Department of the Treasury shall be subject to the penalties set forth in section 1906 of title 18, United States Code, if --

(A) by virtue of his or her employment or official position, he or she has possession of or access to any book, record, or information made available under and determined to be confidential

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[1659] (...continued)
nal Budget Office to request information from, or the assistance of, any Federal department or agency authorized by law to supervise the activities of a GSE.

Senate amendment

The Senate amendment contains essentially the same provision.

Conference report

The conference report adopts the House language.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,167 (1990).

[1660] For excerpts from the statement of managers accompanying the conference report on the Budget Enforcement Act explaining this subsection, see *infra* note 1661 (at the end of this subsection).

under this section; and

(B) he or she discloses the material in any manner other than --

(i) to an officer or employee of the Department of the Treasury; or

(ii) pursuant to the exception set forth in such section 1906.

(4) The Congressional Budget Office shall be exempt from section 203 of the Congressional Budget Act of 1974 with respect to any book, record, or information made available under this subsection and determined by the Director to be confidential under paragraph (1).[1661]

[1661] The statement of managers accompanying the conference report on the Budget Enforcement Act explains this subsection:

House bill

Subsection (e) provides for the confidentiality of the information provided to Treasury and the Congressional Budget Office. The House bill requires the Secretary of the Treasury and the Director of the Congressional Budget Office to determine and maintain the confidentiality of any book, record, or information made available by a GSE, consistent with the level of confidentiality established by the GSE involved. The Department of the Treasury and the Congressional Budget Office were made exempt from Freedom of Information Act requirements for the purpose of this Act. Finally, an officer or employee of the Department of the Treasury or the Congressional Budget Office were made subject to the penalties set forth in section 1906 of title 18, United States Code, if, by virtue of his or her employment or official position, he or she has possession of or access to any book, record, or information made available under and determined to be confidential under this section and if he or she discloses the material in any manner other than to an officer or employee of the Department of the Treasury Congressional Budget Office or pursuant to the exceptions set forth in such section 1906.

Senate amendment

The Senate amendment contained (at 12254(a)(C) essentially similar language to the House bill except that the Senate provided a separate standard of confidentiality for the Congressional Budget Office (at 12254(b)) that did not impose the penalties contemplated by the House bill.

(continued...)

(f)[1662] Requirement to Report Legislation. -- (1) The committees of jurisdiction in the House shall prepare and report to the House no later than September 15, 1991, legislation to ensure the financial soundness of GSEs and to minimize the possibility that a GSE might require future assistance from the Government.

(2) It is the sense of the Senate that the committees of jurisdiction in the Senate shall prepare and report to the Senate no later than September 15, 1991, legislation to ensure the financial safety and soundness of GSEs and to minimize the possibility that a GSE might require future assistance from the Government.[1663]

[1661] (...continued)
Conference report

> The conference report adopted the House language with respect to Treasury confidentiality and the Senate language with respect to CBO confidentiality requirements.

H.R. Conf. Rep. No. 101-964, 101st Cong., 2d Sess. 1,167-68 (1990).

[1662] Note that section 13501 has two subsections (f), here and *infra* p. 690.

[1663] The statement of managers accompanying the conference report on the Budget Enforcement Act explains this subsection:

> *House bill*
>
> Subsection (f) put into statutory language the requirement that the committees of jurisdiction in the House and Senate prepare and report legislation to ensure the financial soundness of GSEs and to minimize the possibility that a GSE might require future assistance from the Government no later than September 15, 1991.
>
> *Senate amendment*
>
> Beginning at subsection (a), the Senate amendment incorporates a sense of the Congress resolution that the appropriate committees of jurisdiction will study the Administration's proposals with respect to GSEs and report legislation by September 15, 1991. Committee legislation will ensure the financial safety and soundness of the GSEs. The sense of the Congress resolution states that if the appropriate committees of jurisdiction failed to act, the Senate will consider GSE legislation on the floor. The sense of the Congress language was intended to be advisory and not binding on the

(continued...)

(f)[1664] PRESIDENT'S BUDGET. -- The President's annual budget submission shall include an analysis of the financial condition of the GSEs and the financial exposure of the Government, if any, posed by GSEs.[1665]

[1663](...continued)

> Committees or the leadership if intervening events next year prevented such consideration.
>
> *Conference report*
>
> The conference adopts the House language with respect to consideration of legislation by the appropriate committees of jurisdiction. However, the conference decides to make the statutory nature of the House language apply only to the House, while the Senate will retain the language in the form of a sense of the Senate resolution. This language intends to provide impetus for Senate action. The conference report also drops the original Senate language that referred to floor action.
>
> . . . .
>
> Section 13501(f) of the bill requires the committees of jurisdiction in the House and Senate to report legislation to ensure the financial soundness of government sponsored enterprises by September 15, 1991. If such legislation is not reported, it is the intent of the conferees that the Leadership of the House and Senate ensure that, by the end of the first session of the 102nd Congress, there is consideration of, and a vote on, legislation the Administration may submit on the financial soundness of GSEs.
>
> The conferees intend that nothing in subtitle E be construed as changing the existing committee jurisdictions with regard to government-sponsored enterprises.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,168-69 (1990).

[1664] Note that section 13501 has two subsections (f), here and *supra* p. 689.

[1665] The statement of managers accompanying the conference report on the Budget Enforcement Act explains this subsection:

> *Conference report*
>
> . . . .
>
> The conference report also adopts a provision that was not contained in either bill, requiring the President's budget to analyze and discuss the financial condition of the GSEs, and the financial exposure of the Federal Government, if any, posed by the GSEs.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,168 (1990).

THE PRESIDENT'S BUDGET
31 U.S.C. ch. 11

§ 1101. Definitions

In this chapter --

(1) "agency" includes the District of Columbia government but does not include the legislative branch or the Supreme Court.

(2) "appropriations" means appropriated amounts and includes, in appropriate context --

(A) funds;

(B) authority to make obligations by contract before appropriations; and

(C) other authority making amounts available for obligation or expenditure.

§ 1102. Fiscal year.

The fiscal year of the Treasury begins on October 1 of each year and ends on September 30 of the following year. Accounts of receipts and expenditures required under law to be published each year shall be published for the fiscal year.

§ 1103. Budget ceiling

Congress reaffirms its commitment that budget outlays of the United States Government for a fiscal year may be not more than the receipts of the Government for that year.

§ 1104. Budget and appropriations authority of the President

(a) The President shall prepare budgets of the United States Government under section 1105 of this title and proposed deficiency and supplemental appropriations under section 1107 of this title. To the extent practicable, the President shall use uniform terms in stating the purposes and conditions of appropriations.

(b) Except as provided in this chapter, the President shall prescribe the contents and order of statements in the budget on expenditures and estimated expenditures and statements on proposed appropriations and information submitted with the budget and proposed appropriations. The President shall include with the budget and proposed appropriations information on personnel and other objects of expenditure in the way that information was included in the budget for fiscal year 1950. However, the requirement that information be included in the budget in that way may be waived or changed by joint action of the Committees on Appropriations of both Houses of Congress. This subsection does not limit the authority of a committee of Congress to request information in a form it prescribes.

(c) When the President makes a basic change in the form of the budget, the President shall submit with the budget information showing where items in the budget for the prior fiscal year are contained in the present budget. However, the President may change the functional categories in the budget only in consultation with the Committees on Appropriations and on the Budget of both Houses of Congress. Committees of the House of Representatives and Senate shall receive prompt notification of all such changes.

(d) The President shall develop programs and prescribe regulations to improve the compilation, analysis, publication,

and dissemination of statistical information by executive agencies. The President shall carry out this subsection through the Administrator for the Office of Information and Regulatory Affairs in the Office of Management and Budget.

(e) Under regulations prescribed by the President, each agency shall provide information required by the President in carrying out this chapter. The President has access to, and may inspect, records of an agency to obtain information.

§ 1105. Budget contents and submission to Congress

(a) On or after the first Monday in January but not later than the first Monday in February of each year.,[1666] the President shall submit a budget of the United States Government for the following fiscal year. Each budget shall include a budget message and summary and supporting information. The President shall include in each budget the following:

(1) information on activities and functions of the Government.

(2) when practicable, information on costs and achievements of Government programs.

(3) other desirable classifications of information.

(4) a reconciliation of the summary information on expenditures with proposed appropriations.

[1666] This period is here in the original. Section 13112(c)(1) of the Budget Enforcement Act struck the words "On or before the first Monday after January 3 of each year (or on or before February 5 in 1986)" here and inserted "On or after the first Monday in January but not later than the first Monday in February of each year." *See supra* p. 626.

The statement of managers accompanying the conference report on the Budget Enforcement Act hedges the changes made by that Act:

> XI. PRESIDENT'S BUDGET SUBMISSION
>
> The conference agreement includes a provisions permitting the President to delay submission to Congress of The Budget of the United States Government from the present requirement of "on or before the first Monday after January 3 of each year" to not later than the first Monday in February. The conferees intended that this increased flexibility be used very rarely to meet only the most pressing exigencies. An orderly and timely budget process requires that Presidential submissions be made on or before the first Monday after January 3 whenever possible. The conferees expect that Presidential submission dates will comply with the January deadline.

H.R. CONF. REP. No. 101-964, 101st Cong., 2d Sess. 1,171 (1990).

(5) except as provided in subsection (b) of this section, estimated expenditures and proposed appropriations the President decides are necessary to support the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year.

(6) estimated receipts of the Government in the fiscal year for which the budget is submitted and the 4 fiscal years after that year under --

(A) laws in effect when the budget is submitted; and

(B) proposals in the budget to increase revenues.

(7) appropriations, expenditures, and receipts of the Government in the prior fiscal year.

(8) estimated expenditures and receipts, and appropriations and proposed appropriations, of the Government for the current fiscal year.

(9) balanced statements of the --

(A) condition of the Treasury at the end of the prior fiscal year;

(B) estimated condition of the Treasury at the end of the current fiscal year; and

(C) estimated condition of the Treasury at the end of the fiscal year for which the budget is submitted if financial proposals in the budget are adopted.

(10) essential information about the debt of the Government.

(11) other financial information the President decides is desirable to explain in practicable detail the financial condition of the Government.

(12) for each proposal in the budget for legislation that would establish or expand a Government activity or function, a table showing --

> **(A) the amount proposed in the budget for appropriation and for expenditure because of the proposal in the fiscal year for which the budget is submitted; and**
>
> **(B) the estimated appropriation required because of the proposal for each of the 4 fiscal years after that year that the proposal will be in effect.**

(13) an allowance for additional estimated expenditures and proposed appropriations for the fiscal year for which the budget is submitted.

(14) an allowance for unanticipated uncontrollable expenditures for that year.

(15) a separate statement on each of the items referred to in section 301(a)(1)-(5) of the Congressional Budget Act of 1974 (2 U.S.C. 632(a)(1)-(5)).

(16) the level of tax expenditures under existing law in the tax expenditures budget (as defined in section 3(a)(3) of the Congressional Budget Act of 1974 (2 U.S.C. 622(a)(3)) for the fiscal year for which the budget is submitted, considering projected economic factors and changes in the existing levels based on proposals in the budget.

(17) information on estimates of appropriations for the fiscal year following the fiscal year for which the budget is submitted for grants, contracts, and other payments

under each program for which there is an authorization of appropriations for that following fiscal year when the appropriations are authorized to be included in an appropriation law for the fiscal year before the fiscal year in which the appropriation is to be available for obligation.

(18) a comparison of the total amount of budget outlays for the prior fiscal year, estimated in the budget submitted for that year, for each major program having relatively uncontrollable outlays with the total amount of outlays for that program in that year.

(19) a comparison of the total amount of receipts for the prior fiscal year, estimated in the budget submitted for that year, with receipts received in that year, and for each major source of receipts, a comparison of the amount of receipts estimated in that budget with the amount of receipts from that source in that year.

(20) an analysis and explanation of the differences between each amount compared under clauses (18) and (19) of this subsection.

(21) a horizontal budget showing --

(A) the programs for meteorology and of the National Climate Program established under section 5 of the National Climate Program Act (15 U.S.C. 2904);

(B) specific aspects of the program of, and appropriations for, each agency; and

(C) estimated goals and financial requirements.

(22) a statement of budget authority, proposed budget authority, budget outlays, and proposed budget outlays, and descriptive information in terms of --

(A) a detailed structure of national needs that refers to the missions and programs of agencies (as defined in section 101 of this title); and

(B) the missions and basic programs.

(23) separate appropriation accounts for appropriations under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) and the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.)

(24) recommendations on the return of Government capital to the Treasury by a mixed-ownership corporation (as defined in section 9101(2) of this title that the President decides are desirable.

(25) a separate appropriation account for appropriations for each Office of Inspector General of an establishment defined under section 11(2) of the Inspector General Act of 1978.

(26)[1667] an analysis, prepared by the Office of Management and Budget after consultation with the chairman of the Council of Economic Advisers, of the budget's impact on the international competitiveness of United States business and the United States balance of payments

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[1667] Note that Congress has enacted another paragraph (26), *infra* p. 703.

Section 5301 of the Omnibus Trade and Competitiveness Act of 1988 added this first paragraph (26). Pub. L. 100-418, § 5301, 102 Stat. 1462 (Aug. 23, 1988). Section 5303 of that Act provides:

> The amendment made by section 5301 shall be effective for fiscal years 1989, 1990, 1991, and 1992, and shall be fully reflected in the budgets submitted by the President as required by section 1105(a) of title 31, United States Code, for each such fiscal year . . . .

Pub. L. 100-418, § 5303, 102 Stat. 1463 (Aug. 23, 1988).

Compare the parallel requirements for the report to accompany the congressional budget resolution set forth in section 301(e)(10) of the Congressional Budget Act. *See supra* pp. 63-64.

position and shall include the following projections, based upon the best information available at the time, for the fiscal year for which the budget is submitted --

(A) the amount of borrowing by the Government in private credit markets;

(B) net domestic savings (defined as personal savings, corporate savings, and the fiscal surplus of State and local governments);

(C) net private domestic investment;

(D) the merchandise trade and current accounts;

(E) the net increase or decrease in foreign indebtedness (defined as net foreign investment); and

(F) the estimated direction and extent of the influence of the Government's borrowing in private credit markets on United States dollar interest rates and on the real effective exchange rate of the United States dollar.

(26)[1668] a separate statement of the amount of appropriations requested for the Office of National Drug Control Policy and each program of the National Drug Control Program.

(b) Estimated expenditures and proposed appropriations for the legislative branch and the judicial branch to be included

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[1668] Note that Congress has enacted another paragraph (26), *supra* p. 702.

Section 1006 of the Anti-Drug Abuse Act of 1988 added this second paragraph (26). Pub. L. 100-690, § 1006, 102 Stat. 4187 (Nov. 18, 1988). Section 1009 of that Act provides that this paragraph is repealed "on the date which is 5 years after the date of enactment," or November 18, 1993. 21 U.S.C.A. § 1506 (West Supp. 1990); Pub. L. 100-690, § 1009, 102 Stat. 4188 (Nov. 18, 1988).

in each budget under subsection (a)(5) of this section shall be submitted to the President before October 16 of each year and included in the budget by the President without change.

(c) The President shall recommend in the budget appropriate action to meet an estimated deficiency when the estimated receipts for the fiscal year for which the budget is submitted (under laws in effect when the budget is submitted) and the estimated amounts in the Treasury at the end of the current fiscal year available for expenditure in the fiscal year for which the budget is submitted, are less than the estimated expenditures for that year. The President shall make recommendations required by the public interest when the estimated receipts and estimated amounts in the Treasury are more than the estimated expenditures.

(d) When the President submits a budget or supporting information about a budget, the President shall include a statement on all changes about the current fiscal year that were made before the budget or information was submitted.

(e)(1) The President shall submit with materials related to each budget transmitted under subsection (a) on or after January 1, 1985, an analysis for the ensuing fiscal year that shall identify requested appropriations or new obligational authority and outlays for each major program that may be classified as a public civilian capital investment program and for each major program that may be classified as a military capital investment program, and shall contain summaries of the total amount of such appropriations or new obligational authority and outlays for public civilian capital investment programs and summaries of the total amount of such appropriations or new obligational authority and outlays for military capital investment programs. In addition, the analysis under this paragraph shall contain --

(A) an estimate of the current service levels of public civilian capital investment and of military capital investment and alternative high and low levels of such investments over a period of ten years in current dollars and over a period of five years in constant dollars;

(B) the most recent assessment analysis and summary, in a standard format, of public civilian capital investment needs in each major program area over a period of ten years;

(C) an identification and analysis of the principal policy issues that affect estimated public civilian capital investment needs for each major program; and

(D) an identification and analysis of factors that affect estimated public civilian capital investment needs for each major program, including but not limited to the following factors:

(i) economic assumptions;

(ii) engineering standards;

(iii) estimates of spending for operation and maintenance;

(iv) estimates of expenditures for similar investments by State and local governments; and

(v) estimates of demand for public services derived from such capital investments and estimates of the service capacity of such investments.

To the extent that any analysis required by this paragraph relates to any program for which Federal financial assistance is distributed under a formula prescribed by law, such analysis shall be organized by State and within each State by major metropolitan area if data are available.

(2) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classi-

fied as a public civilian capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for a number of years and is not classified as a military capital investment under paragraph (3). Such assets shall include (but not be limited to) --

(A) roadways or bridges,

(B) airports or airway facilities,

(C) mass transportation systems,

(D) wastewater treatment or related facilities,

(E) water resources projects,

(F) hospitals,

(G) resource recovery facilities,

(H) public buildings,

(I) space or communications facilities,

(J) railroads, and

(K) federally assisted housing.

(3) For purposes of this subsection, any appropriation, new obligational authority, or outlay shall be classified as a military capital investment to the extent that such appropriation, authority, or outlay will be used for the construction, acquisition, or rehabilitation of any physical asset that is capable of being used to produce services or other benefits for purposes of national defense and security for a number of years. Such assets shall include military bases, posts, installations, and facilities.

(4) Criteria and guidelines for use in the identification of public civilian and military capital investments, for distinguishing between public civilian and military capital investments, and for distinguishing between major and nonmajor capital investment programs shall be issued by the Director of the Office of Management and Budget after consultation with the Comptroller General and the Congressional Budget Office. The analysis submitted under this subsection shall be accompanied by an explanation of such criteria and guidelines.

(5) For purposes of this subsection --

(A) the term "construction" includes the design, planning, and erection of new structures and facilities, the expansion of existing structures and facilities, the reconstruction of a project at an existing site or adjacent to an existing site, and the installation of initial and replacement equipment for such structures and facilities;

(B) the term "acquisition" includes the addition of land, sites, equipment,structures, facilities, or rolling stock by purchase, lease-purchase, trade, or donation; and

(C) the term "rehabilitation" includes the alteration of or correction of deficiencies in an existing structure or facility so as to extend the useful life or improve the effectiveness of the structure or facility, the modernization or replacement of equipment at an existing structure or facility, and the modernization of, or replacement of parts for, rolling stock.

(f)[1669] The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared in a manner consistent with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985 that apply to that and subsequent fiscal years.[1670]

[1669] Section 275(b) of Gramm-Rudman-Hollings provides that section 1105(f) of title 31 shall expire September 30, 1995.

[1670] Section 13112(c)(2) of the Budget Enforcement Act amended subsection (f) to read as it does now. *See supra* p. 626. Before enactment of the Budget Enforcement Act, subsection (f) read as follows:

> (f)(1) The budget transmitted pursuant to subsection (a) for a fiscal year shall be prepared on the basis of the best estimates then available, in such a manner as to ensure that the deficit for such fiscal year shall not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7) of section 3 of the Congressional Budget and Impoundment Control Act of 1974.
>
> (2) The deficit set forth in the budget so transmitted for any fiscal year shall not exceed the maximum deficit amount for such fiscal year as determined under paragraph (7) of section 3 of the Congressional Budget and Impoundment Control Act of 1974, with budget outlays and Federal revenues at such levels as the President may consider most desirable and feasible.
>
> (3) The budget transmitted pursuant to subsection (a) for a fiscal year shall include a budget baseline estimate made in accordance with section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 and using economic and technical assumptions consistent with the current services budget submitted under section 1109 for the fiscal year. If such budget baseline estimate differs from the estimate in the current services budget, the President shall explain the differences. The budget transmitted pursuant to subsection (a) for such fiscal year shall include the information required by section 251(a)(2) of such Act (other than account-level detail) assuming that the deficit in such budget baseline were the amount estimated by the Director of the Office of Management and Budget on August 25 of the calendar year in which the fiscal year begins.
>
> (4) Paragraphs (1) and (2) shall not apply with respect to fiscal year 1989 if the budget transmitted for such fiscal year provides for deficit reduction from a budget baseline deficit for such fiscal year (as defined by section 251(a)(6) of the Balanced Budget and Emergency Deficit Control Act of 1985 and based on laws in effect on January 1, 1988) equal to or greater than $36,000,000,000.
>
> (5) Paragraphs (1) and (2) shall not apply if a declaration of war by the Congress is in effect.

§ 1106. Supplemental budget estimates and changes

(a) Before July 16 of each year, the President shall submit to Congress a supplemental summary of the budget for the fiscal year for which the budget is submitted under section 1105(a) of this title. The summary shall include --

(1) for that fiscal year --

(A) substantial in or reappraisals of estimates of expenditures and receipts;

(B) substantial obligations imposed on the budget after its submission;

(C) current information on matters referred to in section 1105(a)(8) and (9)(B) and (C) of this title; and

(D) additional information the President decides is advisable to provide Congress with complete and current information about the budget and current estimates of the functions, obligations, requirements, and financial condition of the United States Government;

(2) for the 4 fiscal years following the fiscal year for which the budget is submitted, information on estimated expenditures for programs authorized to continue in future years, or that are considered mandatory, under law; and

(3) for future fiscal years, information on estimated expenditures of balances carried over from the fiscal year for which the budget is submitted.

(b) Before July 16 of each year, the President shall submit to Congress a statement of in budget authority requested, estimated budget outlays, and estimated receipts for the fiscal year for which the budget is submitted (including prior proposed for the executive branch of the Government) that the President decides are necessary and appropriate based on current information. The statement shall include the effect of those on the information submitted under section 1105(a)(1)-(14) and (b) of this title and shall include supporting information as practicable. The statement submitted before July 16 may be included in the information submitted under subsection (a)(1) of this section.

(c) Subsection (f) of section 1105 shall apply to revisions and supplemental summaries submitted under this section to the same extent that such subsection applies to the budget submitted under section 1105(a) to which such revisions and summaries relate.

§ 1107. Deficiency and supplemental appropriations

The President may submit to Congress proposed deficiency and supplemental appropriations the President decides are necessary because of laws enacted after the submission of the budget or that are in the public interest. The President shall include the reasons for the submission of the proposed appropriations and the reasons the proposed appropriations were not included in the budget. When the total proposed appropriations would have required the President to make a recommendation under section 1105(c) of this title if they had been included in the budget, the President shall make a recommendation under that section.

§ 1108. Preparation and submission of appropriations requests to the President

(a) In this section (except subsections (b)(1) and (e)), "agency" means a department, agency, or instrumentality of the United States Government.

(b)(1) The head of each agency shall prepare and submit to the President each appropriation request for the agency. The request shall be prepared and submitted in the form prescribed by the President under this chapter and by the date established by the President. When the head of an agency does not submit a request by that date, the President shall prepare the request for the agency to be included in the budget or changes in the budget or as deficiency and supplemental appropriations. The President may change agency appropriation requests. Agency appropriation requests shall be developed from cost-based budgets in the way and at times prescribed by the President. The head of the agency shall use the cost-based budget to administer the agency and to divide appropriations or amounts.

(2) An officer or employee of an agency in the executive branch may submit to the President or Congress a request for legislation authorizing deficiency or supplemental appropriations for the agency only with the approval of the head of the agency.

(c) The head of an agency shall include with an appropriation request submitted to the President a report that the statement of obligations submitted with the request contains obligations consistent with section 1501 of this title. The head of the agency shall support the report with a certification of the consistency and shall support the certification with records showing that the amounts have been obligated. The head of the agency shall designate officials to make the certifications, and those officials may not delegate the duty to make the certifications. The certifications and records shall be kept in the agency --

(1) in a form that makes audits and reconciliations easy; and

(2) for a period necessary to carry out audits and reconciliations.

(d) To the extent practicable, the head of an agency shall --

(1) provide information supporting the agency's budget request for its missions by function and subfunction (including the mission of each organizational unit of the agency); and

(2) relate the agency's programs to its missions.

(e) Except as provided in subsection (f) of this section, an officer or employee of an agency (as defined in section 1101 of this title may submit to Congress or a committee of Congress an appropriations estimate or request, a request for an increase in that estimate or request, or a recommendation on meeting the financial needs of the Government only when requested by either House of Congress.

(f) The Interstate Commerce Commission shall submit to Congress copies of budget estimates, requests, and information (including personnel needs), legislative recommendations, prepared testimony for congressional hearings, and comments on legislation at the same time they are sent to the President or the Office of Management and Budget. An officer of an agency may not impose conditions on or impair communication by the Commission with Congress, or a committee or member of Congress, about the information.

(g) Amounts available under law are available for field examinations of appropriation estimates. The use of the

amounts is subject only to regulations prescribed by the appropriate standing committees of Congress.

§ 1109. Current programs and activities estimates

(a) On or before the first Monday after January 3 of each year (on or before February 5 in 1986), the President shall submit to both Houses of Congress the estimated budget outlays and proposed budget authority that would be included in the budget for the following fiscal year if programs and activities of the United States Government were carried on during that year at the same level as the current fiscal year without a change in policy. The President shall state the estimated budget outlays and proposed budget authority by function and subfunction under the classifications in the budget summary table under the heading "Budget Authority and Outlays by Function and Agency", by major programs in each function, and by agency. The President also shall include a statement of the economic and program assumptions on which those budget outlays and budget authority are based, including inflation, real economic growth, and unemployment rates, program caseloads, and pay increases.

(b) The Joint Economic Committee shall review the estimated budget outlays and proposed budget authority and submit an economic evaluation of the budget outlays and budget authority to the Committees on the Budget of both Houses before March 1 of each year.

§ 1110. Year-ahead requests for authorizing legislation

A request to enact legislation authorizing new budget authority to continue a program or activity for a fiscal year shall be submitted to Congress before May 16 of the year before the year in which the fiscal year begins. If a new program or activity will continue for more than one year, the request must be submitted for at least the first and 2d fiscal years.

§ 1111. Improving economy and efficiency

To improve economy and efficiency in the United States Government, the President shall --

(1) make a study of each agency to decide, and may send Congress recommendations, on changes that should be made in --

(A) the organization, activities, and business methods of agencies;

(B) agency appropriations;

(C) the assignment of particular activities to particular services; and

(D) regrouping of services; and

(2) evaluate and develop improved plans for the organization, coordination, and management of the executive branch of the Government.

§ 1112. Fiscal, budget, program information

(a) In this section, "agency" means a department, agency, or instrumentality of the United States Government except a mixed-ownership Government corporation.

(b) In cooperation with the Comptroller General, the Secretary of the Treasury and the Director of the Office of Management and Budget shall establish and maintain standard data processing and information systems for fiscal, budget, and program information for use by agencies to meet the needs of the Government, and to the extent practicable, of State and local governments.

(c) The Comptroller General --

(1) in cooperation with the Secretary, the Director of the Office of Management and Budget, and the Director of the Congressional Budget office, shall establish, maintain, and publish standard terms and classifications for fiscal, budget, and program information of the Government, including information on fiscal policy, receipts, expenditures, programs, projects, activities, and functions;

(2) when advisable, shall report to Congress on those terms and classifications, and recommend legislation necessary to promote the establishment, maintenance, and use of standard terms and classifications by the executive branch of the Government; and

(3) in carrying out this subsection, shall give particular consideration to the needs of the Committees on Appropriations and on the Budget of both Houses of Congress, the Committee on Ways and Means of the House, the Committee on Finance of the Senate, and the Congressional Budget Office.

(d) Agencies shall use the standard terms and classifications published under subsection (c)(1) of this section in providing fiscal, budget, and program information to Congress.

(e) In consultation with the President, the head of each executive agency shall take actions necessary to achieve to the extent possible --

(1) consistency in budget and accounting classifications;

(2) synchronization between those classifications and organizational structure; and

(3) information by organizational unit on performance and program costs to support budget justifications.

(f) In cooperation with the Director of the Congressional Budget Office, the Comptroller General, and appropriate representatives of State and local governments, the Director of the Office of Management and Budget to the extent practicable) shall provide State and local governments with fiscal, budget, and program information necessary for accurate and timely determination by those governments of the impact on their budgets of assistance of the United States Government.

§ 1113. Congressional information

(a)(1) When requested by a committee of Congress having jurisdiction over receipts or appropriations, the President shall provide the committee with assistance and information.

(2) When requested by a committee of Congress, additional information related to the amount of an appropriation originally requested by an Office of Inspector General shall be submitted to the committee.

(b) When requested by a committee of Congress, by the Comptroller General, or by the Director of the Congressional Budget Office, the Secretary of the Treasury, the Director of the Office of Management and Budget, and the head of each executive agency shall --

(1) provide information on the location and kind of available fiscal, budget,and program information;

(2) to the extent practicable, prepare summary tables of that fiscal, budget,and program information and related information the committee, the Comptroller General, or the Director of the Congressional Budget Office considers necessary; and

(3) provide a program evaluation carried out or commissioned by an executive agency.

(c) In cooperation with the Director of the Congressional Budget Office, the Secretary, and the Director of the Office of Management and Budget, the Comptroller General shall --

(1) establish and maintain a current directory of sources of, and information systems for, fiscal, budget, and program information and a brief description of the contents of each source and system;

(2) when requested, provide assistance to committees of Congress and members of Congress in obtaining information from the sources in the directory; and

(3) when requested, provide assistance to committees and, to the extent practicable, to members of Congress in evaluating the information obtained from the sources in the directory.

(d) To the extent they consider necessary, the Comptroller General and the Director of the Congressional Budget Office individually or jointly shall establish and maintain a file of information to meet recurring needs of Congress for fiscal, budget, and program information to carry out this section and sections 717 and 1112 of this title. The file shall include information on budget requests, congressional authorizations to obligate and expend, apportionment and reserve actions, and obligations and expenditures. The Comptroller General and the Director shall maintain the file and an index to the file so that it is easier for the committees and agencies of Congress to use the file and index through data processing and communications techniques.

(e)(1) The Comptroller General shall --

(A) carry out a continuing program to identify the needs of committees and members of Congress for fiscal, budget, and program information to carry out this section and section 1112 of this title.

(B) assist committees of Congress in developing their information needs;

(C) monitor recurring reporting requirements of Congress and committees; and

(D) make recommendations to Congress and committees for changes and improvements in those reporting requirements to meet information needs identified by the Comptroller General, to improve their usefulness to congressional users, and to eliminate unnecessary reporting.

(2) Before September 2 of each year, the Comptroller General shall report to Congress on --

(A) the needs identified under paragraph (1)(A) of this subsection;

(B) the relationship of those needs to existing reporting requirements;

(C) the extent to which reporting by the executive branch of the United States Government currently meets the identified needs;

(D) the changes to standard classifications necessary to meet congressional needs;

(E) activities, progress, and results of the program of the Comptroller General under paragraph (1)(B)-(D) of this subsection; and

(F) progress of the executive branch in the prior year.

(3) Before March 2 of each year, the Director of the Office of Management and Budget and the Secretary shall report to Congress on plans for meeting the needs identified under paragraph (1)(A) of this subsection, including --

(A) plans for carrying out changes to classifications to meet information needs of Congress;

(B) the status of information systems in the prior year; and

(C) the use of standard classifications.

§ 1114. Budget information on consulting services

(a) The head of each agency shall include in the budget justification for the agency submitted each year to the Committees on Appropriations of both Houses of Congress --

(1) amounts requested for consulting services;

(2) the appropriation accounts from which the amounts are to be paid; and

(3) a description of the need for the consulting services, including a list of the major programs requiring those services.

(b) The Inspector General or comparable official of each agency shall submit to Congress each year, with the budget justification for the agency, an evaluation of the progress of the agency in establishing effective management controls and improving the accuracy and completeness of the information provided to the Federal Procurement Data System on contracts for consulting services. If the agency does not have an Inspector General or comparable official, the head of the agency or officer or employee designated by the head of the agency shall submit the evaluation.

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